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THE RESOLUTION TRUST CORPORATION ASSET DISPOSITION

HEARING

BEFORE THE

COMMITTEE ON BANKING, HOUSING, AND URBAN AFFAIRS UNITED STATES SENATE

ONE HUNDRED FIRST CONGRESS

SECOND SESSION

ON

THE PROGRESS IN MEETING THE DISPOSITION OF ASSETS FROM FAILED SAVINGS AND LOANS

SEPTEMBER 13, 1990

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THE RESOLUTION TRUST CORPORATION ASSET DISPOSITION

THURSDAY, SEPTEMBER 13, 1990

U.S. SENATE,
COMMITTEE ON BANKING, HOUSING, AND URBAN AFFAIRS,
Washington, DC.

The committee met at 10:02 a.m., in room SD–538, of the Dirksen Senate Office Building, Senator Donald W. Riegle, Jr. (chairman of the committee), presiding.

Present: Senators Riegle, Dixon, Graham, Sanford, Kerry, D'Amato, and Pressler.

OPENING STATEMENT OF CHAIRMAN RIEGLE

The CHAIRMAN. The committee will come to order.

Let me welcome our witnesses this morning and all others in attendance.

Today's hearing is about the asset disposition activities of the Resolution Trust Corporation. Asset disposition might also be called cash collection because that's the task of the RTC asset managers.

Under the best of circumstances, this is a difficult task. I think in today's economic environment, it is even more difficult and troublesome.

Prior hearings before this committee have been with the policymakers of the RTC and the Oversight Board itself. Today, we have with us the key managers of the operating divisions of the RTC who are appearing to discuss their implementation of the RTC's strategic plan.

Lamar Kelly is the manager of the Asset and Real Estate Management Division of the RTC. It is his division that is responsible for selling assets that come to the RTC.

In other words, Mr. Kelly's job is to collect money for the RTC from this process. So we look forward to his testimony today about the pace of the RTC's asset sales and the techniques the RTC is using in marketing its assets.

We are also fortunate to have with us William Roelle and Lisa Spector as well to answer questions that might relate to what is going on within the operating divisions.

We will then hear from a second panel of witnesses familiar with asset disposition and affordable housing issues.

Important lessons can be learned from the activities of the RTC that have implications for future legislative and regulatory efforts. For example, the RTC in its asset sales guidelines states that it expects to sell all of its performing single family mortgage loans within 1 year from the time that the RTC acquires title to those loans, and that it expects to sell all of the foreclosed single family houses within 18 months after it takes title to those houses.

On the other hand, the RTC expects that it will take up to 5 years to sell its performing commercial real estate loans.

I think these numbers are very significant. When analysts talk about the problems involved in a concentration in real estate lending, and the loss associated with real estate lending, a lot of citizens, I think, tend to assume that those analysts are referring to single family homes.

But what the data from the RTC shows us is that the collection problems are primarily with commercial real estate and some conclusion and development loans, but generally not with loans to individuals secured by their homes.

As Chairman Seidman testified on January 31 of this year, only $3.2 billion of the $31.2 billion in losses suffered by the RTC can be traced to residential mortgage loans. Although there are a great number of home loans in the portfolios of failed thrifts, these home loans retain a higher percentage of book value and are sold more quickly than other loans.

Further, if we look at the thrifts in the RTC, we see thrifts that were engaged in activities other than loaning money to individuals secured by their homes. Each of the ten thrifts in the RTC's portfolio that reported the largest losses in 1989 had a low percentage of total assets in single family loans. They ranged from a low of 12 percent to a high of 57 percent, but with an average of 29 percent.

The work of the RTC is very important for two reasons. The first reason is the cash that it collects which will minimize the taxpayer contributions that are necessary. The second reason is that we can learn important lessons in evaluating the safety and soundness of our financial system from looking at the end results of the RTC's actions.

I might also say that there is clear and understandable concern as to the fairness and the integrity of the disposition process. There's been a concern from the very beginning that the disposition of these assets, unless the procedures are absolutely above board and fair and that we have open bidding and absolute vigilance against favoritism or manipulation of any kind, that this would be the kind of enormous task that could lend itself to misconduct.

And I know the three of you are vigilant about that and I hope that you'll talk about that today as well in terms of safeguards of whatever sort you're employing to make sure that we're not finding later that there will be some kind of a pattern of activity there that would be improper or incorrect.

So, with that, Mr. Kelly, let me call on you now. We'll make your full statement a part of the record and we'd very much like to hear your presentation.

STATEMENT OF LAMAR KELLY, DIRECTOR, ASSET AND REAL ESTATE MANAGEMENT, RESOLUTION TRUST CORPORATION, WASHINGTON, DC, ACCOMPANIED BY LISA SPECTOR, DIRECTOR, FINANCE AND ADMINISTRATION DIVISION, RTC; AND WILLIAM ROELLE, DIRECTOR, RESOLUTIONS AND OPERATIONS DIVISION, RTC

Mr. KELLY. Good morning, Mr. Chairman. I'm pleased to take this opportunity to discuss the real estate sales activities of the Resolution Trust Corporation.

As we at the RTC have stated on numerous occasions, the RTC is essentially a sales and marketing organization. We take very seriously the charge that you mentioned to recover as much in the way of present-value cash as we can from the assets that we hold.

In that regard, I will tell you facetiously that, with somewhat a degree of facetiousness, that we have changed some of the words that we utilize at the RTC.

As such, we no longer have any more distressed assets. What we now have are illiquid investment opportunities.

And we certainly don't have any more poor quality real estate. What we now have is real estate that might not have been priced properly in the past.

In all seriousness, I would tell you that the efforts of the RTC and the RTC Oversight Board over the past year have laid the policy and procedural groundwork for what we believe will be an exciting and productive second year of operation.

What I want to do today is to briefly discuss the procedures, goals for the future, and some results of our operations.

Regarding asset sales, as soon as an institution is placed into the RTC's conservatorship program, the RTC readies marketable assets for immediate sale. Marketable assets are sold using an open and competitive process to facilitate the shrinking of the institutions to its core, to relieve liquidity pressures and to reduce high cost liabilities within the institution.

Through July 31, the RTC had sold assets totaling $31.1 billion and collected principle payments worth $25.8 billion, for a total of $56.9 billion of collections at conservatorship institutions. This represents some 23 percent of the asset balances of these institutions when they were placed in conservatorship.

Our goal is to dispose of assets totaling $36 billion from conservatorships during the third and fourth quarter of this year.

The RTC has successfully passed some $24.7 billion of assets to acquirers in resolution transactions. Based on our experience to date, approximately one half of the assets are sold during the time period from inception of conservatorship through date of resolution.

While our general policy has been to offer transactions which encourage the passing of assets to acquirers, the general mood of the financial community has been one of caution.

Uncertainty in the economy has been such that financial institutions do not want to be locked into long-term, fixed-rate assets. We therefore sometimes have been unable to transfer even our safest assets; that is, performing single family mortgage loans. Acquirers have almost no interest in purchasing real estate owned or commercial real estate loans in conjunction with the resolution.

As of July 31, there were $37 billion in noncash assets in receivership. We have adopted a goal of reducing this inventory by $14 billion by the end of 1990.

As you might guess, the assets that end up in receivership represent our most challenging investment opportunities.

The CHAIRMAN. Could I just stop you at that point?

Mr. KELLY. Yes, sir.

The CHAIRMAN. I want to cross-relate as we go the disposition of assets, the dollar volume of assets as set beside the inflow of assets that you then are faced with getting rid of.

So I want to know whether the net balance is dropping down or whether you've got new assets flowing in at a rate that is as great as or greater than the disposition rate of assets already on hand.

Can you just give me a sense for that? I mean, is your inventory going down or is it holding steady or is it increasing?

Mr. KELLY. Well, Mr. Chairman, because of the reduction in the number of conservatorships that we are taking into our inventory, the pace of asset sales is keeping us with what we are acquiring right now. But that's a somewhat illusory statement in that, obviously, there are a lot more assets out there yet to come to the RTC. And the fact is that the pace of asset sales, there is no way that we can keep up because of the large influx that's out there to come. There's no way that we can keep up on a reasoned basis, anyway, with the inflow of assets.

The CHAIRMAN. So at the present time, then, now that your system is up and running and your disposing of assets as rapidly as you wisely can, you're still having new assets come in. And so your overall inventory is continuing to go up.

Is that right?

Mr. KELLY. That's a correct statement, particularly in receivership. We refer to those assets in receivership as our left-overs. They are the most challenging assets that we have to dispose of and those assets are very, very difficult assets in a lot of cases. And the best way to maximize recoveries for the government is to take a very reasoned approach to working out those assets. That is, restructuring those mortgage loans with existing borrowers, where possible, and at the same time trying to minimize the additional cash that we have to put into them.

But I would tell you, sir, that those are very difficult assets to deal with and it takes a significant period of time to work out those assets.

For instance, we have found, on average, that to foreclose commercial mortgages, it takes from 1 to 3 years. It's a very difficult proposition, from a litigation standpoint, a cost standpoint.

So the whole resolution process, particularly when you get into a litigious proceeding with a borrower, is very drawn out.

The CHAIRMAN. Now, as long as I've interrupted, let me ask one other question that I want to have as sort of a benchmark here at this point.

And that is, the last time I looked, if my memory is right, about 70 percent of the total dollar value of assets in the RTC were within the boundary lines of the State of Texas.

Is that still the case?

Mr. Kelly. I have not looked at those numbers recently, but, yes, sir, that's generally true. The vast majority of our assets, particularly our real estate-owned assets, are located in Texas.

The Chairman. And because your commercial real estate seems to be the toughest thing to deal with, and you're nodding in the affirmative.

Mr. Kelly [nods in the affirmative.] Yes, sir.

The Chairman. I would appreciate it if there's anybody here with you that could provide it for us now, what percentage of commercial real estate, say, in your inventory is in Texas?

Would it be 70 percent or higher? Can anybody tell me that?

Mr. Kelly. I don't have those figures with me, but, certainly, we can get those figures and supply them to you.

The Chairman. Is it your impression that it's up in that range, that it would be the lion's share?

Mr. Kelly. Absolutely. Yes, sir.

The Chairman. So the reason I want to take the time to establish that, because, then, it would seem to me that your ability to roll these assets over and sell them, because they're concentrated so heavily in one geographic area, is very much dependent upon how that area is doing.

In other words, the economic realities of that area become paramount in terms of your ability to unload assets at sensible prices.

Or said another way, let's say you had an even distribution of those assets across the 50 States. Then you'd have some real estate markets that were strong, some of them might be work. But being able to roll that pile of assets through I would think would be quite different than if they were spread more uniformly across the country.

And so, is it a fair conclusion for me to reach that because the dominating share of assets are in Texas, that we really have to understand the realities of the Texas situation to appreciate exactly what we're facing here in terms of selling these things, selling them on a timely basis, realizing some measure of "full value," whatever that is?

Is that right?

Mr. Kelly. I agree with you, sir. Real estate, in my opinion, is a local market phenomenon. So to the extent that our assets are concentrated in any one market, even by product type, that we're going to be governed as to what we can do by the help or lack thereof of that real estate market in that geographic area.

There's no question about it.

The Chairman. Is it also fair to say, then, that if you have that kind of a situation, you've got a huge concentration of assets in one State and you want to try to push them out the door at the best price you can, and if you've got a soft real estate market out there, anyway, that it's very difficult to do that?

I would assume that that is—you're working in the face of a very adverse condition. I know there's been some rebound in the Texas real estate market, but I gather it's modest.

Is that a fair statement?

Mr. Kelly. Yes, sir, there is. And I think when you look at Texas, not only do you have to look at the types of real estate that we're talking about, but you have to look at geographic areas within Texas.

For example, selling raw land or large real estate developments in Austin, Texas, is going to be a very, very difficult proposition. Multifamily apartment projects in Houston, Texas, Dallas, and any other areas—there's a hot market for those kinds of properties right now.

Retail products in some of those markets are coming back, but slower than the multifamily stuff. So it really is by product type and by geographic area.

The CHAIRMAN. Right. Now, with respect to raw land, is any appreciable amount of the asset base raw land?

Mr. KELLY. Approximately half of the inventory that we have is land in various forms. That would include single-family lots.

The CHAIRMAN. So they could have the infrastructure, the curbs and the sidewalks and water in, but no houses.

Mr. KELLY. Yes, that's correct. We have a number of projects—I'm thinking of one in Arizona—where we have in excess of $200 million invested in the project and there's only four homes on that project, constructed in that project to date.

The CHAIRMAN. On that, when you've got a very weak real estate market and these assets are really available at fire sale prices—I mean, we're in a fire sale type situation, in effect—why wouldn't we be better off—your job is to sell assets, but I'm just asking you for your opinion on this. Why wouldn't we be better off taking the raw land, in effect, raw land, and just land-banking it?

I mean, in effect, we've already bought it. We might as well hold onto it. I mean, why wouldn't the public be better off sitting on it, holding it? There's a minimal kind of an operational cost of doing that with raw land. And even if we held it for 3 years or 5 years or 10 years, eventually, presumably, one's going to see higher value.

Why wouldn't we be better off allowing raw land, the increase in value to accrue to the taxpayer rather than just to somebody who comes in today and buys it at a bargain price and they make the profit?

Mr. KELLY. Well, Mr. Chairman, I think there are several issues there.

As a general proposition, it would be my opinion, anyway, that holding property off the market is an extremely speculative—is the best way for it—thing to do.

The fact is that by holding property off the market, the people who are involved in developing viable real estate projects out there, they never know when that overhang of properties is going to hit the market. So it's very much of a destabilizing influence in that real estate market.

Frankly, I think, given the absorption period that we're looking at with respect to some of these projects, I mean, I've seen appraisals where they talk about 7- and 10-year absorption periods for marketing whole projects like that. And given the oversupply in some of these markets on a best-use basis—in other words, the use it was intended for development—it's our opinion that we should look at alternate uses for some of those large land development projects that we have, such as perhaps agricultural use, that we might be better off just recognizing that there's a substantial loss there and going on and recognizing that loss and letting the markets recover.

The other thing is that, with respect to raw land, even though it is certainly not as costly to hold raw land as it is other types of properties, there are carrying costs associated with that land.

So the question you have to ask is whether or not we would be better off realizing a cash value out of that property, letting the markets recover, earn money on that cash that we have, avoid payment of taxes, avoid real estate or maintaining that real estate from, if nothing else, just mowing the property. A lot of these properties have infrastructure in there and so it's not a simple proposition just to say that I can walk away from it and hold it in a land bank for a period of time.

The CHAIRMAN. Yes. I don't mean to suggest that it is. It's a very complex issue and I appreciate the point you make.

But when you take undeveloped land or land that is essentially vacant land and you're selling it into a real estate market collapse, I mean, you're selling it at very low prices, you have a situation where you have the taxpayer now on one side of the transaction—we now own the asset—you've got the new buyer out there who's able maybe at a fraction of what might be some normal value to be able to come along and pick this up because you've got an acute distress condition.

I think we have to have some sensitivity to the issue on assets where there's a nominal carrying cost, unlike in commercial building, but, say, vacant land, in an area that has shown great strength before.

I think if we end up selling those assets at 10 cents on the dollar from what they used to be, or 20 cents on the dollar and within any short period of time things turn around and somebody makes $5, $6, $10, $20, $30 in gain per dollar invested, there's going to be a war party out looking for Kelly.

It won't matter where you live; it will hunt you down.

So I think the whole issue of thinking through very carefully the question of how much undeveloped land is pushed out into a market that's very feeble and where, in a sense, you may in effect almost be giving the land away, I think a lot of taxpayers would say, you'd better weigh that one very carefully and you'd better be sure you're right.

Mr. KELLY. Mr. Chairman, I would just tell you that we are very sensitive to the issue of approaching war parties, for one thing.

Second, I think that you're exactly right, that when we say that everything we have is for sale, that's a generalized proposition. But as I indicated, real estate is a local phenomenon.

So we have to be very sensitive to the kinds of issues that you're talking about and our whole process is meant to do this, that. Even though we have general policies, it's meant to go through and look at economically the situation with respect to individual parcels of property. And if we have to hold on to it or even expend additional dollars in order to maximize values, then our people understand that that's what they should do.

The CHAIRMAN. I wanted to interject, as we have here for the last several minutes, to try to sort of get some benchmarks around what you were saying.

I'd like you now to continue with your summary.

Mr. KELLY. Thank you, sir.

Turning to the bidding process, the RTC is establishing two methods to promote the solicitation of loans and other assets. The first will be a weekly advertising and the national financial publication of a calendar of offerings of available loans and other assets for sale. We expect that calendar to be in place by the end of this month.

An investor will be able to call one of our offices and receive the offering.

The second major initiative is the establishment of a system of one-stop-shopping outlets or sales centers. The RTC's national sales center in Washington, DC, in conjunction with our 14 regional and field sales centers, will provide comprehensive information for potential purchasers. These sales centers will have both the staff and the expertise to promote individual properties of national and regional appeal and to assemble large packages of assets for auctions and bulk sale transactions.

These sales centers will not result in the lesser usage of private real estate brokers. They're intended to provide better information to purchasers and to facilitate sales efforts of private brokers.

I would just add that the reason that we established those sales centers is, quite frankly, that we had received some complaints and frustration on the part of the buying public in just attempting to find out who to deal with in the RTC.

We have some 250 different institutions out there. We have 14 different field offices. And so, we're establishing these sales centers so that an individual can come to those sales centers and our people will be responsible for figuring out where the property is held, what institution holds it, getting information on it, so that the buyers of our property are not frustrated in their efforts to deal with the RTC.

The CHAIRMAN. And where will those be?

Mr. KELLY. They will be in 14 field sites of our consolidated field sites across the country, in places such as Phoenix, Arizona, Dallas, Texas, and on the east coast, Atlanta, Tampa, Baton Rouge, Louisiana, and Philadelphia and places like that, where we have concentrations of assets.

The CHAIRMAN. I would assume that if 70 percent of your assets are in Texas, you're going to have more than one outlet in Texas.

Mr. KELLY. Yes, sir. We have an office in San Antonio. We have one in Dallas. And we have one in Houston. And it's not set in stone that we will not establish more offices if the need arises down in Texas.

The CHAIRMAN. Do you carve the State up by geographic area or by asset classification?

Mr. KELLY. No, sir, by geographic area.

The CHAIRMAN. And how long have they been open?

Mr. KELLY. These sales centers have been open within the last 2 months. It's a relatively recent development.

The CHAIRMAN. And so, can you describe one of them for us? How does it work?

Mr. KELLY. What we have, in each one of the sales offices is sales representatives, account representatives. If an individual is interested in finding out about loans or real estate owned that we have in our inventory, they simply come in, talk to one of our account representatives. We have computerized information available on the individual properties, or if we don't have it in that particular sales center and they can go into any one of our sales centers in any area of the country and get information on any property located anywhere else in the country, then the account representative will be responsible for coordinating that whole effort for the prospective purchaser.

The CHAIRMAN. Now, you've been open 2 months down there. If you take one of these offices, I'm sure you've probably been down to visit one.

Mr. KELLY. Yes, sir.

The CHAIRMAN. How many employees would be in one of these offices?

Mr. KELLY. It depends on the size of the portfolios, but we have authorized an initial staffing level of 30 individuals in those offices.

The CHAIRMAN. So if we flew down there today and we went to the Houston office, we'd find an office that's set up. There would be 30 people in there. They've got computers. They've got records.

What would we find?

Mr. KELLY. I have not visited Houston personally, but I would hope that you would find 30 people in there with the computerized information available to you. And if you didn't, we could certainly cure that real quickly.

The CHAIRMAN. But I want to just track it through because sometimes Government, we've got to connect a lot of links and sometimes we get a lot of them connected and we don't get them all connected.

So if somebody out there today has an interest, then they find out what the street address is and they come down and they walk in the front door and they say, I'm so and so and I understand that you've got properties for sale. I'm interested in taking a look.

And then they're assigned to an account rep.

Mr. KELLY. Yes, sir.

The CHAIRMAN. And then they would presumably indicate what kind of properties they're interested in and then that account rep would say, well, this is what I have available and then start down through the list. And then they would work almost like a real estate agent, then?

How would you describe it?

Mr. KELLY. Yes, sir, except that they would be facilitators, primarily, when we were talking about individual parcels of real estate.

Typically speaking, our policies require that we list with real estate brokers. So, typically, you would have a real estate broker that would be listing agent for a particular property. And so the account rep in our sales office would be responsible for finding out who that real estate broker is, finding out all the particulars with respect to that piece of real estate and, if appropriate, putting the purchaser into contact with that real estate agent and following up with that real estate agent as to how that contact went.

The CHAIRMAN. So is it fair to say, then, that all of the properties out there now have been assigned to one or another private real estate agent that's out there trying to sell this thing?

Mr. KELLY. If we have clear title to them, if we consider them to be in a marketable state, if we have gone through evaluation process and established the listing price for them, then they should typically be listed with a broker either on an exclusive basis or on an open listing basis.

The CHAIRMAN. How is that process done? I mean, once you've got it cleared and ready for sale, how is the decision made to give it to real estate A versus real estate agent B?

How do they get assigned?

Mr. KELLY. Well, typically, what our people would do is go through and look at the complexity of the real estate that we're talking about.

If it's a complex piece of real estate, then we would actually go through a bid process, and if it's large enough, certainly a bid with respect to broker's commission. But if it's a normal piece, a smaller dollar value commercial real estate, we would pay a normal broker's commission.

But we would actually go through a technical evaluation process by soliciting at least three brokers and, in most instances, more than that, to determine their qualifications from a technical competency standpoint. And we would award that contract to the one that we found to be most competent.

The CHAIRMAN. You say in some cases you've got exclusive listings. In other cases, you've got a multiple listing?

Mr. KELLY. In the case of residential properties, what we typically do is list that property on an open listing basis, which means that any broker out there can bring a buyer to the table and we will pay them a normal and customary commission, as opposed to an exclusive listing arrangement.

I would add that we're exploring a number of alternatives to expedite our marketing process, including we're in active discussions with the National Association of Realtors in order to test the feasibility of our putting some of our properties into their multiple listing service data base.

The CHAIRMAN. Why wouldn't you want to do that? That seems to me to be—I mean, you want as many real estate agents out there trying to sell this property as you can. Why wouldn't you want a multiple listing in virtually every case, unless it's some very, very arcane, one-of-a-kind deal?

Mr. KELLY. We absolutely are striving towards that end. And in the event of——

The CHAIRMAN. Wait a minute. You say striving toward that end. Why don't you start there? Why do we end up there? Why wouldn't that be the first thing you would do and anything that would be a deviation from that would be an exception to that?

Mr. KELLY. As I indicated, it's not, as far as getting into their multiple listing service, we are going through negotiations and matching data bases and doing things like that in order to facilitate that.

We certainly would like to have our properties listed through their multiple listing services, at least in major geographic areas.

But the net effect of our open listing, the reason we utilize open listings for residential properties is that, obviously, residential properties are a local-type phenomenon and in 99 percent of the cases, or higher than that, every real estate broker in that local area is notified that we do have this property for sale and that any of them can bring a broker, a customer to the table.

And frankly, we think that facilitates broker interest in our properties and results in a more competitive process as far as bringing buyers to the table than we otherwise can get.

The CHAIRMAN. Let me just stop and indicate to Senator Graham where we are here.

Mr. Kelly is giving a summary of where the RTC stands right now in its asset disposition process. He has just indicated that they've opened up, I think 14 offices around the country that are, in a sense, field offices to try to sell assets where they have a concentration of assets.

He's testified for the record that about 70 percent of the total dollar value of the assets are in the State of Texas alone.

So you've got this very heavy concentration in certain areas of the country, but very particularly so in that State.

He's indicated that there are three offices that have now been opened in Texas and we were just going through the nature of what that office is like. There are about 30 people assigned to each office. They've got computers and listings of properties.

We were just going through the question of how to, just the simple mechanics of how someone who is interested in bidding on a property comes into the office, what happens when they come into the office, what does the sales agent for the Government have available to work with, and so forth.

And we were just on the question of the degree to which we're working through the established real estate dealer network in a given area to try to get all of the real estate people who are out to do this as a normal way of life working for us, in a sense, of being able to know what's available, try to sell it, try to find a buyer, et cetera.

So, in any event, that's sort of where the discussion is right now and we were just talking about the degree to which everything is multiple listing versus discrete assignment.

I'm interested in the instances where there is a discrete assignment to a given sales agent in the private sector and how those people are chosen and who they are because, again, I'm concerned about the appearance. I'm concerned about possibilities for any kind of favoritism. I'm also concerned about just the question of whether we've got enough people out there to really maximize the number of bidders in the selling price on a given asset.

Just so my colleagues are up-to-date as to where we are right now in the discussion.

Apart from the multiple listing part, and it seems to me that that's what you ought to have in almost every single case, can you give me a sense for the volume of assets that end up getting assigned to a particular private sector sales person to try to sell?

How often is that happening and what would be the typical kind of situation in which that would happen?

Mr. **Kelly**. Mr. Chairman, all of our real estate that we have in our inventory that is marketable, where we have clear title and values, is available for sale through private real estate brokers.

As I indicated, our offices, as a matter of routine, have been instructed to furnish listings of all of our real estate that we have to brokers in their area, and in instances where there's more of a degree of management involved in the process, to go out and actively solicit particularly commercial real estate brokers to ensure that we get the most competent real estate broker to handle that property for us, and it's an open and competitive process.

We're very sensitive to what you're saying, and frankly, we have avoided situations where we've had a number of proposals to have individual firms come in and handle all real estate for us in a given area.

Because we want to maintain as open and competitive a process as we can, we have resisted that to date and frankly, I think it has served us well. The local brokers compete and brings buyers for our properties and maximizes the values that we receive for those properties.

The **Chairman**. I might say one other point and then I'm going to have you continue.

I asked the question, they've got this great big mountain of repossessed assets in the RTC, and more coming in all the time. And of course, they're selling assets off. Do they sell of the commercial, or I should say the residential, mortgages most readily once they get clear title and so forth.

But I asked whether the total volume that they've got is going down? Is it holding steady? Or is it increasing?

And I think it's fair to say that he felt that the volume was still on the increase; that is, as rapidly as they're disposing of assets out of the front door, there's more assets coming in through the back door and the inventory is actually increasing.

Is that fair?

Mr. **Kelly**. That's true, particularly our difficult to deal with assets that are going to take a longer period of time to resolve.

The **Chairman**. Let me say to my colleagues, he's just in the middle of his summary here, and I would be happy, now that we've interrupted, if either of you want to make comment, to do so now, or we'll let him finish.

[Senator Graham nods in the negative.]

[Senator Sanford nods in the negative.]

The **Chairman**. Very good. Go ahead, Mr. Kelly.

Mr. **Kelly**. With respect to sales prices, I would just say that in evaluating offers for purchase and ensuring that the sales process is fair, the RTC's criteria may be simply stated. All offers received prior to final approval by the appropriate RTC official are considered and the offer selected must provide the highest net present value return on the asset to the RTC.

Turning to financing for real estate sales, in response to the market pressures, the RTC Oversight Board in March 1990 revisited the issue of seller financing and revised or clarified portions of its strategic plan. These revisions included the lowering of the minimum downpayment requirement from 25 to 15 percent and a $1 billion cap on seller-financed loans to be held by the RTC at any one point in time.

They indicated that seller financing should be used sparingly by the RTC and only when necessary to complete the real estate transactions that maximized the net present value return to the RTC. And that the RTC must have made a good faith determination that the note is salable in the secondary market.

I would tell you that the issue of seller financing is one that's being actively discussed with the oversight board.

Our view is that some of the prior restrictions that have been imposed on the RTC with respect to sale of real estate owned have to be liberalized for some types of real estate. And an example of the type of real estate I would be talking about would be raw land or vacant strip shopping centers located in Texas.

It's also our judgment that this issue of the amount of financing that we provide will have to be revisited from time to time, dependent on local market conditions.

In summary, with respect to the financing issue, I would just tell you that our experience to date has been that while we sold over $3 billion worth of real estate owned, that most of those real estate owned sales have been the more readily marketable real estate owned, and that if we don't provide seller financing with respect to some of these types of properties that we have, particularly in some of the more difficult areas, then we will not be selling a whole lot of raw land, for instance, in Texas, or strip shopping centers, vacant strip shopping centers.

A primary focus of the RTC's affordable housing disposition staff in each region has been on identifying a range of resources that can be utilized to finance properties made available through our affordable housing disiposition program.

As a result of that emphasis, qualified purchasers have often made poor price offers and taken advantage of private lender financing and reserve funds available from housing finance agency tax-exempt bond issues.

The RTC is exploring other areas of support, such as discounts, to facilitate bulk sales of eligible properties. We are encouraged by the Oversight Board's policy which allows the RTC to work with State and local housing agencies in developing bond financing programs such as that used in our recent affordable housing fair in Phoenix, Arizona.

Another method to assist in the selling of assets is through securitizing loan assets, a method which we hope to use much more extensively to command a better price and more timely execution of sale.

The RTC's Board of Directors recently approved the provision of customary representations and warranties. These representations and warranties will significantly expedite the securitization process.

And finally, I'd like to discuss briefly the use and monitoring of private sector contractors.

The RTC is now one of the largest owners of real estate owned and real estate financial instruments in the world. We firmly believe that the private sector must be the driving force in selling these and other assets under our control.

The first major asset management contract on a more permanent basis was recently awarded for the management and sale of $2.6 billion of assets in Texas. By the end of 1990, we expect to have $30 billion in assets under management by private sector contractors.

The RTC's asset management contractors will have the primary responsibility to perform loan workouts, manage real estate owned by RTC receiverships, prepare assets for sale, market them, and advise the RTC on the best course of disposition for each asset or groups of assets.

All private sector contractors engaged by the RTC to render substantial services have made written fitness and integrity certifications and are included in the national RTC contractor data base. Presently, there are over 30,000 firms registered in our data base. Of this total, 6,500, or 22 percent, are minority or women-owned businesses.

In order to minimize the possibility of hiring contractors who have conflicts or have been involved in illegal activities, or are under investigation, we require additional certifications when proposals are submitted.

Prior to awarding a complex or significant contract, the RTC's office of investigations under Mr. Roelle conducts a background check to verify these certifications. Contracts are not awarded until any conflicts have been satisfactorily resolved.

The RTC will be establishing a contractor surveillance and enforcement unit within the asset and real estate management division to investigate and monitor our asset disposition process, particularly as it is implemented among our private sector contractors. This office will ensure that all participants in our sales process receive fair and appropriate consideration without unduly slowing our marketing efforts.

Additionally, the RTC has established nine procedural mechanisms to ensure that the disposition process is fair and open. These mechanisms range from a comprehensive asset management contract to this extensive asset management and disposition manual that I have with me.

And I would be happy to provide this to the committee, if you so desire.

The CHAIRMAN. Yes, I would like one for the committee's use. Thank you.

Mr. KELLY. Thank you for the opportunity to appear before you today. We will be available to answer questions from you and other members of your panel.

Mr. Chairman, in closing, I would just say that sometimes the daily challenges that we face at the RTC can best be characterized as an attempt to herd a pack of squirrels.

Nonetheless, we at the RTC are very optimistic that the problems can be resolved efficiently and we are motivated to do so.

On a personal note, I would add that, Mr. Chairman, I'd like to take this opportunity to thank the literally thousands of RTC employees who have worked 12 hours a day and more since this legislation was passed to make the RTC work. I certainly owe them a debt of gratitude and I think that the process, while we're not satisfied with the process to date and we're actively pursuing a number of mechanisms to include the process, I think those individuals deserve credit for what has been accomplished to date.

We would be pleased to answer any questions that you have.

[The complete prepared statement of Lamar C. Kelly, Jr. follows:]

TESTIMONY OF

LAMAR C. KELLY, JR.
DIRECTOR, ASSET & REAL ESTATE MANAGEMENT DIVISION
RESOLUTION TRUST CORPORATION

ON

ASSET DISPOSITION

BEFORE THE

COMMITTEE ON BANKING, HOUSING, AND URBAN AFFAIRS
UNITED STATES SENATE

10:00 A.M.
SEPTEMBER 13, 1990
ROOM SD-538
DIRKSEN SENATE OFFICE BUILDING

Summary of RTC Testimony Before Senate Banking Committee by Mr. Lamar C. Kelly, Jr. on Asset Sales, September 13, 1990

The RTC is essentially a sales organization. Significant sales have taken place but much remains to be done.

Asset Sales During Conservatorships: Readily marketable assets are positioned for immediate sale as soon as an institution goes into RTC conservatorship program. Sales shrink institutions, relieve liquidity pressures and reduce high cost liabilities. Competitive processes are used to maximize proceeds and assure fairness. Retaining advisors to oversee disposition of certain assets has proven beneficial. The RTC has sold $31.1 billion and collected payments of $25.8 billion, for $56.9 billion total collections at conservatorship institutions.

Asset Sales During Resolutions: The RTC has passed $24.7 billion in assets to acquirers in resolution transactions, though as of July 31 there were still $124 billion in assets in conservatorships yet to be resolved. RTC general policy for resolution transactions encourages passing of assets to acquirers. However, uncertainties in the economy have made the transfer of even safe assets more difficult, and have resulted in almost no interest from acquirers in purchasing real estate owned or commercial real estate loans as part of a thrift sale.

Asset Sales in Receiverships: On July 31, there were $37 billion in non-cash assets in receiverships. Our goal is to reduce this inventory by $14 billion by year end. Programs to accelerate the sale of assets include:

--Bulk Sales -- large portfolios of real estate and non-performing loans will be sold. The RTC will finance a portion of the sale and share in the collection proceeds.

--Sales of Securities -- These are sold when they become unencumbered. Approximately $9 billion have been sold thus far, including $550 million in "junk" bonds. All sales are competitively bid, with 125 potential buyers competing to date.

--Securitization -- 1-4 family mortgages are being securitized now. The RTC is seeking specialists to assist in securitizing more difficult assets, such as commercial loans.

Open Bidding Process: All real estate assets are available for sale and all realistic offers will be accepted. We believe in exposing real estate to the widest possible market so all potential purchasers share equal access to information. We regularly update our Real Estate Asset Inventory, make it available on computerized formats, and have toll-free numbers to call for information. To facilitate sales, we are establishing Calendar of Offerings by weekly advertising in a national financial publication. We now have a national and 14 regional sales centers investors may contact, as well as local brokers. Sales centers have staff with expertise to promote larger properties and packages of assets for auctions and bulk sales. Multiple listing services are extensively used, and promote competition and openness. Auctions will be open to the buying public and provide a competitive means of disposing of properties. A Contractors Surveillance and Enforcement Unit will investigate and monitor the asset disposition process to ensure all participants receive fair consideration.

Target Rates for Disposition of RTC Assets: The RTC has developed performance models to measure time frames for disposing of assets, which depend on the type of asset and quality of the portfolio. Time frames are based in part on experience of the FDIC and former FSLIC.

Financing for Real Estate Sales:

--Seller Financing Policies -- The RTC prefers cash sales of its assets. Present seller financing rules require minimum down payment of from 25 percent to 15 percent and a $1 billion cap on amount of seller-financed loans held by RTC at any one time. Rules will be used sparingly when necessary to complete transactions that maximize net return to the RTC. In addition, notes must be saleable in the secondary market.

--Financing for Affordable Housing Initiatives -- A primary focus of the RTC's Affordable Housing Program is identifying a range of financial resources for use with the Program. The RTC is exploring other methods of support, such as discounts for bulk sales. The RTC is working with state and local housing agencies to develop bond financing programs.

--Securitization of Loans -- Methods are now being tested in our Eastern Regional Office in Atlanta. The RTC will offer customary representations and warranties for single family loan mortgages. The RTC will eventually be able to conduct direct swaps of whole loans for mortgage-backed securities, allowing competitive sales of the securities created.

Monitoring Private Sector Contractors: The private sector must be the primary force in selling RTC assets. To use the private sector, we have developed the Standardized Asset Management and Disposition Agreement. All private sector contractors used by the RTC have made written Fitness and Integrity certifications and are included in the National RTC Contractor Database. This database is used by all offices of the RTC to select private sector firms for proposal solicitations. Presently, there are over 30,000 firms registered, of which 6,500, or 22 percent, are minority or women-owned businesses. By year end we plan to have $30 billion in assets under management by private sector contractors. These contractors will be monitored by staff in RTC consolidated field sites, with further oversight by both RTC regional office staff and RTC Washington staff. Prior to awarding a contract additional certifications and background information must be submitted, and the RTC's Office of Investigations conducts a background check to verify these certifications. Information may also be solicited from other financial regulators at both the state and federal levels. Adverse findings are presented to the RTC Contractors' Conflicts Committee. Contracts are not awarded until any conflicts are satisfactorily resolved or accounted for.

Good morning, Mr. Chairman and members of the Committee. I am pleased to take this opportunity to discuss the real estate sales activities of the Resolution Trust Corporation. As we at the RTC have stated before, the RTC is essentially a sales and marketing organization. I therefore take pleasure in representing today the men and women, primarily in our regional and field offices and with our private sector contractors, who are dedicated to the prospect of selling the real estate assets in the nation's most challenging portfolio. The efforts of the RTC over the past year have laid the administrative and procedural groundwork, necessary in any government initiative of the RTC's scope, for what we believe will be an exciting and productive second year of operation.

My testimony today will address the specific issues raised in your letter of invitation. I would first like to share with you, however, a sampling of what we have accomplished in the past year in the way of asset sales and place in perspective the aggregated sales figures which have been provided as attachments to my testimony (see Attachments 1, 2 and 3).

Over the past year, the RTC has sold, for example, $17 billion in mortgage servicing rights, and we anticipate selling $12 billion more by the end of September. Since March of 1990, we have also sold over $9 billion in securities, $7 billion of which were mortgage-related. Despite the economic concerns presently reflected in the marketplace, we have sold over $1.5 billion of securities since the beginning of August, including over $1 billion in mortgage-backed securities and over $140 million in "junk bonds." These sales also included the largest "residuals" sale in history--over $85 million--almost twice the previous record.

Sales of loans, which are among the most cumbersome and time-consuming assets to sell, are increasing, with several very large sales consummated over the past few months and billions of dollars more in the pipeline. A $10 billion pilot program has been launched in our Eastern Region, which controls more than 35 percent of RTC loan assets, to test methods of selling single-family mortgages. Initial offerings of seven portfolios totalling $966 million of fixed-rate first mortgages achieved a weighted average price of 95.248 percent of par. In August, the RTC also sold $225 million in second mortgage loans, on a servicing-released basis, which were with Atlantic Financial Savings in Pennsylvania. In addition to the sale of $915 million in automobile loans held by Empire Federal Savings Bank of America, the RTC has completed owned real estate sales of over $3 billion.

As these examples illustrate, we believe that the RTC is now beginning to demonstrate its effectiveness as a sales organization. While these sales are among the more dramatic examples of our sales initiatives, they represent a fraction of the marketing efforts being put forth by our regional and field staffs in conjunction with our private sector contractors. There is still, however, much room for improvement, and we welcome this opportunity to discuss the policies and procedures integral to our asset sales activities in conservatorships and receiverships.

Asset Sales During Conservatorships

As soon as an institution is placed into the RTC's conservatorship program, the RTC's managing agent and asset specialist perform an analysis of the institution's financial condition to position readily marketable assets for immediate sale. The analysis is quickly followed by a vigorous marketing effort. These marketable assets of the institution are examined, divided into groups, and prepared for sale. Since most of the institutions under our control have grown beyond their normal core deposit base, easily marketable assets are sold to facilitate the shrinking of the institution to its core, to relieve liquidity pressures, and to reduce high cost liabilities within the institution. When marketing the assets, the managing agent must employ the competitive process to maximize sales proceeds and assure fairness among potential buyers. Securitizing 1-4 family mortgages is another option that the managing agent can explore. Advice on securitization is available through the Regional Offices and the Division of Finance and Administration.

For certain types of assets, the RTC has retained advisers to oversee their disposition. The most prominent example is the case of mortgage servicing. Since June 1, 1989, the RTC (or the FDIC as Conservator) has engaged the firm of Hamilton, Carter and Smith and the firm of Smith Barney to advise the RTC on the disposition of mortgage servicing rights. This approach has proven to be very beneficial to the RTC. Mortgage servicing is a very specialized business with a limited number of market participants. Having high quality advisers and a centralized system for disposing of these assets, the RTC has sold, as noted previously, over $17 billion in servicing in the past year and expects to sell an additional $12 billion prior to September 30. Through the competitive bidding process, the RTC has received $314 million in sales proceeds.

Through July 31, the RTC has sold $31.1 billion and collected principal payments worth $25.8 billion for a total of $56.9 billion of collections at conservatorship institutions. This represents 23 percent of the asset balances of these institutions when they were placed in conservatorship.

Asset Sales during Resolutions

The RTC has successfully passed $24.7 billion of assets to acquirers in resolution transactions. Through asset sales and collections in conservatorships and the passing of assets in resolution transactions, we have reduced the total asset base of institutions entering the conservatorship program by 33 percent. As of July 31, however, there were still $124 billion of assets in conservatorships.

While our general policy has been to offer transactions which encourage the passing of assets to acquirers, the general mood of the financial community has been one of caution. Uncertainties in the economy, even prior to recent events in the Persian Gulf region, have been such that financial institutions do not want to be locked into long-term, fixed-rate assets. Hence, we sometimes have been unable to transfer even our safest assets--performing single-family mortgage loans. Acquirers therefore have almost no interest in purchasing real estate owned or commercial real estate loans in conjunction with a resolution.

Asset Sales in Receiverships

As of July 31, there were $37 billion in non-cash assets in receiverships. These assets are principally from the transactions that occurred in the second quarter of 1990, and we have adopted a goal of reducing this inventory by $14 billion by the end of 1990. As you might guess, the assets that end up in receivership represent our most challenging properties. The

Asset and Real Estate Management Division has accordingly developed a number of programs to accelerate the sale of these assets.

--Bulk Sales

The Oversight Board has recently given us approval to begin a "bulk sale" program. Under this program, the RTC will assemble large portfolios of real estate and non-performing loans and sell them to private investors. The RTC will finance a portion of the sale and will share in the collection of proceeds from the sale of the assets. This program, when fully in operation, will allow us to move large portfolios of real estate, increase our cash flow, and share in any "up side" in the value of the assets.

--Loan Sales Advisers

We have also developed a sales program for pools of performing single-family mortgages and consumer loans. We have selected 18 firms to market and sell performing single-family loans for the RTC, and 14 firms to market and sell consumer loans. These firms have qualified to analyze, evaluate, package, market, and sell these types of assets for the RTC. Since mortgages and consumer loans constitute over 50 percent of all receivership assets, we believe the engagement of these firms will appreciably accelerate the sale of these assets.

--Sales of Securities

The RTC has a large volume of mortgage-related securities, both standard and exotic, as well as a substantial quantity of "junk bonds". The Capital Markets Branch of the Finance and Administration Division is responsible for all securities transactions for the RTC and also assists in the downsizing of a conservatorship by selling securities and other capital markets instruments prior to resolution.

Virtually all unencumbered securities (for example, those not pledged against liabilities) are sold while an institution is still in conservatorship. Those securities which are in receivership and which are pledged against liabilities are not free for sale, however, until they become unencumbered. Despite these many challenges, approximately $9.1 billion of securities--including approximately $7 billion of mortgage-related products and approximately $550 million of junk bonds--have been sold through the Capital Markets Branch since March of this year. All sales have been conducted via the competitive bidding process such that 125 potential buyers (broker/dealers, companies, investors, etc.) have been given an opportunity to compete for these assets. Additionally, financial derivatives such as interest rate swaps, caps, floors, or other hedging instruments have been sold, unwound, or terminated through this same competitive process.

Junk bond sales continue to be conducted in an orderly fashion which requires extensive coordination among the various RTC thrifts, their outside advisers, and the Capital Markets staff in Washington. The RTC portfolio of junk bonds, however, contains a number of credits which are currently involved in restructuring and/or are tied up in bankruptcy courts, thereby placing limitations on our ability to sell these assets.

In an effort to assist in disposition strategies for its high yield securities, the RTC is soliciting registered contractors for advisory services, and responses to the Solicitation of Services are due by September 14. Once an outside adviser is "on board", the RTC will analyze all disposition options, some of which include CBO's (collateralized bond obligations), bulk sales, workouts, auction sales, etc. In an effort to reach as many buyers as possible, the RTC's junk bond portfolio was published on July 19th and will be published again in early October and quarterly thereafter.

--Securitization

Although securitization issues will be discussed in greater detail later in conjunction with our financing efforts, RTC advisers are working with receiverships which have identified securitizable pools of 1-4 family mortgages. The RTC is also seeking investment banks and other secondary market specialists to assist in structuring other assets more difficult to securitize, such as commercial loans.

I would now like to discuss the four specific questions posed in Chairman Riegle's invitation letter.

Open Bidding Process

At the outset, let me emphasize that all real estate assets owned by the RTC are available for sale and that all realistic offers (that is, offers generally within the approved statutory range of 90 to 95 percent of market value) will be considered. The mandate of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (FIRREA) requires that the RTC sell its properties as quickly as possible without compromising the integrity of the sales and marketing process and without unduly impacting local economies.

Consistent with our aggressive sales strategy, the RTC believes that exposing its real estate to the widest possible market, so all potential investors share equal access to our property information and sales processes, ensures an open and competitive bidding environment which is free of favoritism. To this end, we have regularly updated our Real Estate Asset Inventory and made it available to investors in book or computerized formats. Our inventory of properties for sale can also be accessed by our toll-free numbers.

The RTC is establishing two methods to promote the solicitation and sale of loans and other assets. The first method will be a weekly advertising in a national financial publication of a Calendar of Offerings of available loans and other assets for sale. An investor will be able to call one of the sales centers and receive the offering. The second method will be a consolidated investor database where an investor is placed on this database by simply calling the sales centers and providing investment parameters. When the RTC offers a loan package that meets those parameters, this information is sent to the investor.

Investors may also initiate an inquiry to purchase by contacting one of our national or regional sales centers or, if they prefer, one of our many local brokers. The RTC's National Sales Center in Washington, D.C., in conjunction with our 14 regional and field sales centers, will coordinate nationwide sales efforts and ensure that all properties are aggressively marketed to the buying public. These sales centers will have both the staff and the expertise to promote individual properties of national and regional appeal and to assemble large packages of assets for auctions and bulk sales transactions.

The RTC's sales centers will also operate in conjunction with our local real estate brokers to promote and sell properties. The RTC believes that the sale of our single-family residences depends on the effectiveness and professionalism of the local brokerage community. Multiple listing services of local brokers expose these properties to a broad market of interested purchasers, and the brokers themselves can often sell property faster with a resulting maximized net recovery to the RTC. In addition, since most residential property is for sale through a standardized open listing, all real estate brokers may solicit buyers for all of our properties, thereby promoting competition and exposing the real estate to the broadest possible market.

In evaluating offers for purchase and ensuring that the sales process is fair, the RTC's criteria may be simply stated: all offers received prior to final approval by the appropriate RTC official or committee are considered, and the offer selected must provide the highest net return on the asset to the RTC. An important sales method will be auctions, which are open to the buying public and provide the RTC with a cost-efficient, open, and competitive means of disposing of properties.

The RTC will be establishing a Contractors Surveillance and Enforcement Unit within its Asset and Real Estate Management Division to investigate and monitor our asset disposition process, particularly as it is implemented among our private sector contractors. This office will ensure that all participants in our sales process receive fair and appropriate consideration without unduly slowing our marketing efforts.

Target Rates for Disposition of RTC Assets

The RTC has developed performance standards to measure the time frames necessary to dispose of asset portfolios. The specific time frames are dependent upon the type of asset as well as the quality of the portfolio. These time frames were developed by specialists in the RTC's Asset Disposition and Research areas and are based in part upon the experience and observation of disposition activity by the Federal Deposit Insurance Corporation's Division of Liquidation and the former Federal Savings and Loan Insurance Corporation. These guidelines measure asset disposal results from both asset sales and collections of non-performing and performing loans. See Attachment 4 for a copy of the guidelines.

Financing for Real Estate Sales

--Seller Financing Policies

Consistent with the Strategic Plan of the RTC Oversight Board, the RTC has typically preferred cash sales of its assets. Under the Strategic Plan, the RTC could provide financing only when necessary to complete real estate transactions that maximized the net present value return to the RTC. The Strategic Plan had specified, as conditions of seller financing, minimum down payments of 25 percent, that the RTC's financing would be senior to any other financing, that concessionary terms would be offset through a higher sales price, and that any performance guarantees on loans sold by the RTC would not exceed six months in duration.

In response to the market, the Oversight Board in March 1990 revisited the issue of seller financing and revised or clarified portions of its Strategic Plan. These revisions included the lowering of the minimum down payment requirement from 25 percent to 15 percent and a $1 billion cap on seller-financed loans to be held by the RTC at any one time. In its consideration of this issue, however, the Oversight Board reiterated its position that seller financing should be used sparingly by the RTC and only when necessary to complete real estate transactions that maximize the net present value return to the RTC. Additionally, the RTC, at the time that seller financing is provided, must have made a good faith determination that the note is saleable in the secondary market. Evaluations of net present value typically require, among other relevant factors, an examination of a property's purchase price, the value of any concessionary financing and any avoided holding costs, as well as any enhanced asset liquidity resulting from conversion of a real estate asset into a performing financial asset.

As a result, the RTC now expedites its real estate sales through the occasional use of seller financing. Although the RTC continues to require a 25 percent down payment in most instances, down payments can be as low as 15 percent if the RTC can readily sell its interest in the secondary market or if the transaction will otherwise result in a maximization of the net present value return to the RTC. Other than short-term bridge loans, the RTC seeks to sell its interests on a non-recourse basis within one year after the date of origination. We also explore the feasibility of private placements, public offerings of pools of loans, and loan securitization agreements, etc. Only in the unlikely event that private sector financing is virtually unavailable for a particular piece or type of property (or for a specific geographic market) would the RTC otherwise consider seller financing. RTC regional offices will be conducting semi-annual surveys to determine if private sector financing is unavailable or if more traditional financing requirements are too restrictive.

In addition to financing guidelines recently developed by the RTC's Asset and Real Estate Management Division to implement the seller-financing policies of the Oversight Board, the RTC will be reporting to the Oversight Board on a quarterly basis the amounts, terms, and conditions of any seller-financed sales. The RTC will also be reporting the amount of seller-financed loans sold by the RTC and the method of disposition.

--Financing for Affordable Housing Initiatives

A primary focus of the RTC's Affordable Housing Disposition staff in each region has been on identifying a range of resources that could be utilized to finance properties made available through our Affordable Housing Disposition Program. As a result of that emphasis, qualified purchasers often made full-price offers and took advantage of private lender financing and reserve funds available from Housing Finance Agency tax exempt bond issues. The RTC is exploring other areas of support such as discounts to facilitate bulk sales of eligible properties to public agencies and non-profit organizations that commit to rent or re-sell the properties to lower-income families. We are also considering applications of pricing and financing concepts underlying bulk sales mechanisms that can be used with the sale of eligible multi-family properties in the Affordable Housing inventory.

We are perhaps most encouraged, however, by the Oversight Board's policy which allows the RTC to work with state and local housing agencies in developing bond financing programs to provide low-interest mortgage loans to low- and moderate-income buyers. The RTC used this financing method, for example, in our recent Affordable Housing Fair in Phoenix, Arizona.

--Securitization of Loans

Another method to assist in the selling of assets is through securitizing loan assets, a method which we hope to use more extensively. The RTC's plans to securitize loans, now being tested in our Eastern Regional Office in Atlanta, are based on the premise that certain loans, if packaged in the form of securities, will command a better price and more timely execution upon sale. In order to compete in this market, however, a seller must be in a position to offer representations and warranties, where appropriate, and articulate all the terms and conditions for the sale in the loan agreement itself.

The RTC's Board of Directors recently approved the provision of customary representations and warranties. These representations and warranties will be offered with a standard loan sale agreement in our sales of single-family mortgage loans. Modifications to this whole loan agreement will eventually enable the RTC to conduct, on a competitive basis, direct swaps of whole loans for mortgage-backed securities with the Federal National Mortgage Association (Fannie Mae), the Federal Home Loan Mortgage Corporation (Freddie Mac), or other contractors currently active in the secondary market.

Monitoring Private Sector Contractors

The RTC is now one of the largest owners of real estate in the world. We firmly believe that, given the proper incentives, the private sector must be the driving force in selling these and the other assets under our control. In order to accomplish this, we have developed a Standardized Asset Management and Disposition Agreement (SAMDA) which will be a key factor in our program.

All private sector contractors engaged by the RTC have made written Fitness and Integrity certifications and are included in the National RTC Contractor Database. This Database is used by all offices of the RTC to select private sector firms for proposal solicitations. Presently, there are over 30,000 firms registered in our database. Of this total, 6,500, or 22 percent, are minority- or women-owned businesses.

The first major SAMDA contract, and what will probably be the largest, was recently awarded to the J.E. Robert Company, Inc., for the management and sale of $2.6 billion of assets of the receiver for University Savings of Houston, Texas. By the end of 1990, we plan to have $30 billion in assets under management by private sector contractors.

The RTC's SAMDA contractors will have the primary responsibility to perform loan workouts, manage real estate owned by RTC receiverships, prepare assets for sale, market them, and advise the RTC on the best course of disposition for each asset or group of assets. These contractors will be monitored primarily by staff at the consolidated field office sites, with further oversight both by RTC regional office staff and RTC Washington staff, depending on the size and type of portfolio.

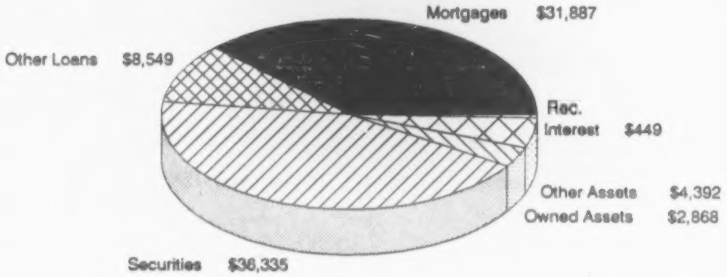
In order to ensure that the fitness and integrity of contractors engaged to perform services is satisfactory and to minimize the possibility of hiring contractors who are otherwise involved in illegal activities or are under investigation, we require additional certifications and background information when proposals are submitted. This requirement is over and above the self-certifications provided when a firm requests registration. Prior to awarding a contract, the RTC's Office of Investigations conducts a background check to verify these certifications. The type of information that must be provided by potential contractors includes the firm's taxpayer identification number and the names and backgrounds of principals, owners, and key personnel. Information concerning the winning bidder may also be solicited, if appropriate, from other financial regulators on both the federal and state level. Adverse findings are discussed with RTC's regional ethics officer and then are presented to the RTC Contractors' Conflicts Committee. Contracts are not awarded until any conflicts have been satisfactorily resolved or explained.

Thank you for the opportunity to appear before you today. In your letter of invitation, you asked Ms. Elisabeth Spector, Director of our Finance and Administration Division, and Mr. William Roelle, Director of our Resolutions and Operations Division, to be available to discuss their areas of expertise. They are here with me today, and we would be pleased to answer any questions you may have.

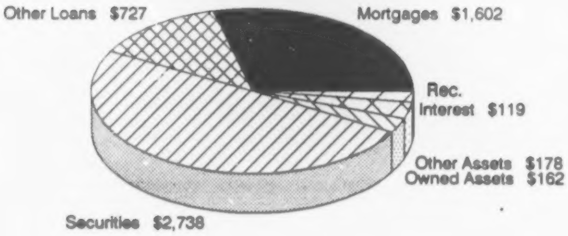
ATTACHMENT 1

ASSET SALES AND COLLECTIONS

INCEPTION 1989 THROUGH JULY 1990
($ in millions)



JULY 1990
($ in millions)



ATTACHMENT 2

RTC ASSET COMPOSITION
AS OF 7/31/90
($ in Billions)

	Cons	Rec's	Total	Pct of Total
Mortgages				
Perf 1–4 Fam	36.0	7.4	43.4	56%
Non Perf 1–4 Fam	1.1	0.8	1.9	2%
Perf Const & Land	3.1	1.1	4.2	5%
Non–Perf Const & Land	4.1	2.0	6.1	8%
Perf Other Mtgs	13.0	4.0	17.0	22%
Non–Perf Other Mtgs	3.1	2.3	5.4	7%
Total Mortgages	60.4	17.6	78.0	48%
Other Loans				
Perf Other Loans	8.8	2.3	11.1	78%
Non Perf Other Loans	1.5	1.6	3.1	22%
Total Other Loans	10.3	3.9	14.2	9%
Securities				
Cash & Invest Sec	17.9	3.5	21.4	53%
Mtg Backed & Other Sec	12.3	2.7	15.0	37%
Junk Bonds	2.7	1.0	3.7	9%
Total Securities	32.9	7.2	40.1	24%
Owned Assets (REO)	11.4	6.3	17.7	11%
Other Assets	8.8	5.2	14.0	9%
Grand Total	$123.8	$40.2	$164.0	100.00%

ATTACHMENT 3

Beginning Assets and Asset Reductions Inception through July 1990 *

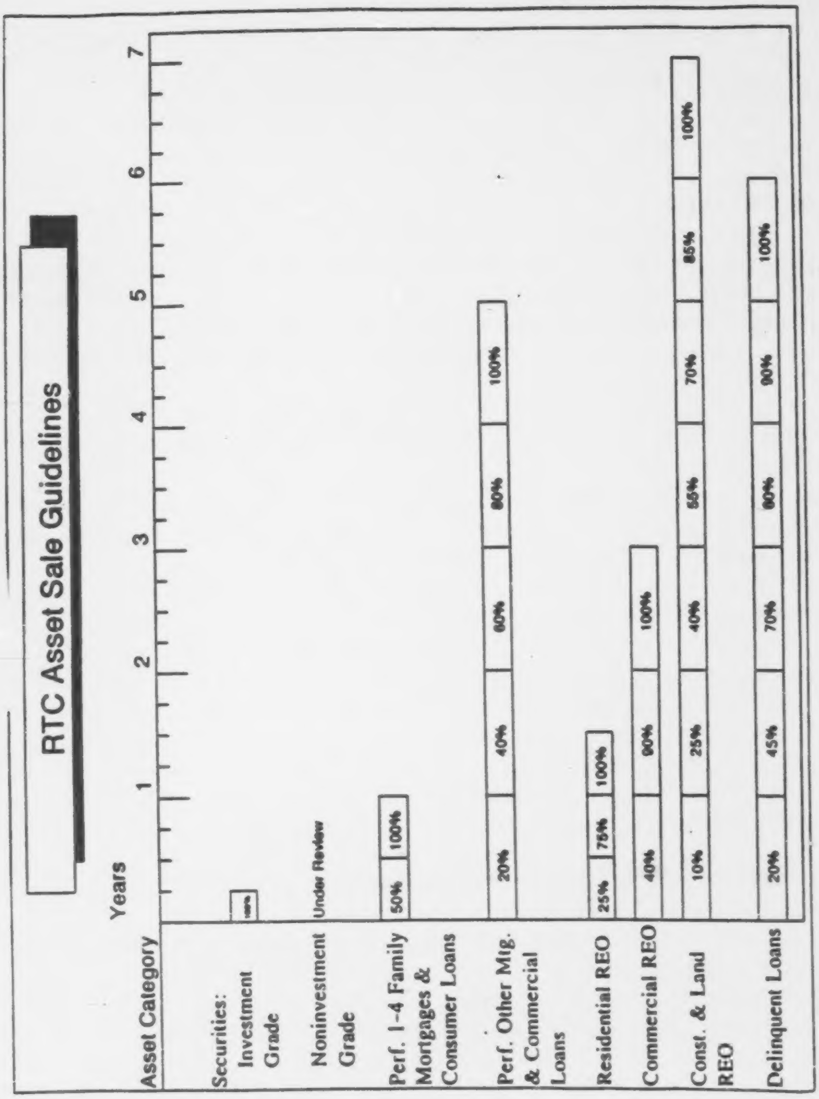
($ in billions)

Asset Type	Assets at Beginning Conservatorship	Reductions during Conservatorship			Resolution & Receivership Reductions			Conservatorship & Receivership Assets, June 30, 1990
		Sales Proceeds	Payments & Maturities	Other Changes (Net)**	Passed to Acquirer	Principal Collections	Other Changes (Net)	
Total	$245.0	($31.1)	($25.8)	($1.1)	($24.7)	($2.4)	$0.9	$160.8

* Refers to 258 conservatorships and 211 receiverships as of July 31, 1990.

** Changes in Other Assets include net losses on sales, and charge-offs of goodwill and certain equity investments.

ATTACHMENT 4



The CHAIRMAN. I'm going to hold off on my questions right now because I want to go to my colleagues. But I want you to put three facts on the record before we go to them.

First, what's the rough head count right now of employees in the RTC?

Mr. KELLY. Mr. Chairman, it's approximately 5,000.

The CHAIRMAN. So you have about 5,000 people on board and you're hiring people all the time, are you, or not?

Mr. KELLY. Yes, sir, we are.

The CHAIRMAN. What level do you envision getting up to?

Mr. KELLY. We would expect that that count that we set early on, that count would be around 5,000. And certainly, although I haven't seen the most recent staffing projections, I would hope that that number would top out at around 6,000.

The CHAIRMAN. So you envision hiring another 1,000 people from where you are today.

Now, in terms of your best estimate of the dollar value of assets that you have in your inventory right now, what's a good figure for us to use?

Mr. KELLY. Mr. Chairman, the dollar amount in our inventory right now, as of June 30, was $161 billion. That number had increased to $164 billion as of the end of July.

The CHAIRMAN. $164 billion. What would it have been at the end of last year? Do you have that figure?

Mr. ROELLE. I think I've got it somewhere in my papers.

The CHAIRMAN. I'm just wondering, I assume the $161 billion or the $164 billion is higher than it was at the end of last year or not?

Mr. ROELLE. In our inventory?

The CHAIRMAN. Yes.

Mr. ROELLE. The numbers that Mr. Kelly gave you in our inventory would have included conservatorships, as well as the receivership.

We have taken on additional conservatorships, but certainly——

The CHAIRMAN. Yes. So, in any case——

Mr. KELLY. Mr. Chairman, I have that number for you.

The CHAIRMAN. OK.

Mr. KELLY. It was $115 billion as of the end——

Excuse me, that was projected as of the end of 1990.

The CHAIRMAN. We show at the end of the year about $106 billion.

Mr. KELLY. Pardon?

The CHAIRMAN. As of November 30, 1989, it looks like $106 billion.

Would that be right? That's book value.

Well, in any event, if that's in the ballpark, something just over $100 billion, in 6 months' time, that's gone up from roughly $100 billion, $105 billion, thereabouts, to $160 billion.

So, as you're selling properties off, you're obviously adding properties at least through the first 6 months at a pretty high rate.

Now, one other thing and then I'm going to yield to Senator Graham, and that is this. Can you give us a rough split now of, say, the $160 billion, roughly, by category? In other words, how much would be commercial properties, how much residential, how much junk bonds, how much whatever else?

Mr. Kelly. Absolutely. The mortgages total $78 billion. And within that $78 billion, performing one to four mortgages total $43 billion. Other loans, which would include your normal commercial loans and some consumer loans total $14 billion. Cash and investment securities, total securities was $40 billion, and that included cash and investment securities of $21 billion. Junk bonds of $3.7 billion. Mortgage bank and other securities of $15 billion. And then owned assets—that is, real estate owned—was $7 billion. And then other assets, which would include everything but the kitchen sink—interest in subsidiaries, et cetera—was $14 billion.

The Chairman. Very good. Senator Graham.

Senator Graham. Thank you, Mr. Chairman.

I have an opening statement that I would like to submit for the record.

The Chairman. Please.

Senator Graham. And to ask some questions from that statement.

OPENING STATEMENT OF SENATOR GRAHAM

Mr. Chairman, the hearing today to review the process for disposing of assets held by the RTC is very important. FIRREA hs been enacted into law for a year. I know how difficult it has been to start this organization, to hire the staff and to start to dispose of the property.

I am particularly looking forward to our witnesses' testimony to have their assessment of the process to date. My office in Washington and Florida have received numerous complaints about the RTC. These range from the slow response time to the applications for those individuals and firms who want to work for the RTC to; individuals and firms wanting to bid on properties and not getting telephone calls returned or even having their calls answered when they call the RTC offices to; finding the property they are interested in in Key West being handled by a real estate firm in San Diego to; one company who had $1 million in cash available for property was told by the RTC they would take the sale. Then the RTC changed its mind because it decided not to sell one parcel of property from a group but to wait for the whole parcel to sell. The company didn't understand why the RTC would give up $1 million cash to wait. The company was told they could bid on the parcel but their legal fees were becoming excessive and they decided to withdraw.

Finally, Mr. Chairman, I will be interested in discussing the treatment of companies who are part of a strip mall that goes under. These people are getting conflicting advice from the financial regulators and the RTC. What is needed Mr. Chairman is an ombudsman office at the RTC to help these small businesses through this difficult process.

We have probably received more constituent letters and telephone calls relating to RTC than virtually any other single matter in the last 6 months. I'd like to use this opportunity to relate some of the generic concerns that we are getting.

One of those is the difficulty of getting a timely response to requests. This may be a tenant who is in an RTC-controlled shopping center and needs to know whether they can extend their lease or make some improvements, the sort of day-to-day, ongoing relationship that exists between a landlord and a tenant.

Could you tell us what is your assessment of how well those relationships are being managed, recognizing that if they're not managed well, the problem will be exacerbated because your tenants will leave and you'll lose that revenue source?

And if you're not satisfied, what steps are going to be taken in order to improve the situation?

Mr. Kelly. Yes, sir. There's no question that we need to improve in that area. We have issued a number of policies that say things like if we receive an offer to purchase real estate or we receive an offer to settle or rent, that we have a policy that a maximum of 30 days that that individual should receive an answer.

On a substantive standpoint, I'll tell you that I think the answer is to get in place the longer term private sector asset managers.

When Bill and I are dealing with some 250 different institutions in conservatorship, and while we have a very comprehensive policy manual that says you will do this, you have the culture that was associated with that institution and it's a little bit like trying to turn a supertanker around.

Frankly, we feel that the longer term solution is to get those institutions out of conservatorship, to get those assets that can be sold in the hands of the acquirer through Mr. Roelle's efforts, and to get the residual assets into the hands of private sector asset managers that have been trained in our policies and procedures and understand what we're trying to accomplish.

And we're running as hard as we can to get that done.

Senator Graham. If we had a constituent who contacted us and said that 30 days had passed since they had made a request and hadn't gotten a response, what should we do with it?

Mr. Kelly. They should contact the regional director or the office director that they are involved with, and if they don't get a satisfactory answer from those people, we've been encouraging them to contact us directly in Washington and I can assure you that we will get them an answer.

Senator Graham. You've got lots of telephone lines?

Mr. Kelly. We have lots of telephone lines and we get a lot of mail, yes, sir.

Senator Graham. A second concern, and this gets into some of the confusion, and I'll say that myself and people in our office suffer from this confusion, and I'm certain the general public, and that is just as to what is the responsibility of, for instance, OTS versus RTC and the other alphabet groups that are involved in this.

But this has to do with where a property is in one location and the decisions relative to that property are being made in a distant location.

As an example, we received an inquiry from a constituent in Key West who was interested in a property located in that city and found that the real estate firm which was handling it was in San Diego and was having difficulty getting communications and an attempt to secure the information necessary to make an offer.

Is this an aberrant, and if not, is there going to be a policy of trying to get the decisionmakers closer to the people who are likely to be interested in the property?

Mr. KELLY. As I indicated to Chairman Riegle earlier, candidly, we have experienced some problems in that area. And what we have done in the situation where you're talking about, a property might be located across the street from a purchaser and it would be owned by an institution in San Diego.

And what we have done is established some sales centers in each one of our regional and field office cities and those sales centers are meant to be information dissemination type centers, where an individual can either call or go into one of those sales centers and our people will be responsible for determining which institution actually owns that property, get all the information about it, and make it available to the prospective purchaser, and thereby avoid the frustration that they had been experiencing in trying to figure out who to deal with within our bureaucracy.

And what we're saying is you can come to our sales centers and our people will figure out where that property is held and get the information about that property to the purchaser.

Senator GRAHAM. Have you considered setting up within RTC something analogous to an ombudsman or citizen service center so that there was a single number that people could call and then get directed to the various specific geographic or functional offices that can best take care of their problem?

Mr. KELLY. We do have an ombudsman's office here in Washington and we have inquiry centers in each one of our field cities.

Unfortunately, do any of you have that phone number? We missed an opportunity there, but we do have an ombudsman's office here in Washington and parties can contact that office for complaint resolution.

I'd be happy to supply those numbers to you, sir.

Senator GRAHAM. I would suggest if you could provide it for the record here, but also if some effort at a public information program to let people know where they can sort of enter the system to get good information for their specific concerns.

Mr. KELLY. We have done that in the past, but we certainly would do that again, sir.

Senator GRAHAM. Mr. Kelly, I appreciate the enormity of the task that you have and the short time in which you have been in existence to try to carry out that task—not you biologically, but RTC.

I commend you for the efforts that you're making. You have an extremely challenging task ahead of you, a challenge that I imagine you relearn every day on the job.

I wish you well and look forward to working with you to see that our common goals are met.

Mr. KELLY. Thank you.

The CHAIRMAN. Senator Sanford? I beg your pardon. Senator Pressler?

Senator PRESSLER. That's all right. You go ahead.

Senator SANFORD. Go right ahead.

Senator PRESSLER. Thank you very much.

I guess one thing that we all wonder is whether the taxpayer is getting a fair return in circumstances where, in some cases, you have to sell something perhaps below its real value just to move it. How do you make the decision when to hang onto something in the hope there will be a better bid or a better offer?

Mr. KELLY. Senator, we have a general policy that says that everything we have is for sale at realistic values. We also have a policy that says that we don't believe in fire sales.

Our whole appraisal process and evaluation process has been geared towards establishing an appropriate marketing period, No. 1, and No. 2, engaging in a very aggressive marketing process in order to realize the most value that we can from an asset.

Frankly, we think that there are two cornerstones to doing that, and one would be to arrive at a realistic—and by realistic, I mean net of holding costs associated with an asset. And then, as I said, number two, to engage in a very aggressive, open and fair marketing campaign to sell a particular asset.

Senator PRESSLER. What appraisal methods do you use with the more unusual pieces of property or more complicated businesses? What appraisal or valuation method do you use?

Mr. KELLY. Well, in the case of if we're dealing with a financial asset, what we try to do, and perhaps Bill Roelle or Lisa Spector would care to add something to this, but if we're dealing with a stock instrument, for instance, a wholly owned subsidiary, we typically hire an independent advisor to advise us as to the value of that asset and to advise us as to the marketing method that we should utilize with respect to disposal of that asset.

And the same would be true with respect to real estate owned. We conduct a competitive process to select the most qualified appraiser to give us a value for a piece of property. We tell that appraiser to tell us, No. 1, the marketing period we could expect to realize a value and then to tell us primarily and No. 2, the value that we should expect to receive during that marketing period in present value dollars.

That process, that whole process, I might add, has served us very well in the past, in that we have independent confirmation of not only our values that we try to utilize in disposing of assets, but we have a process whereby we receive independent advice as to the marketing process itself.

Senator PRESSLER. Are you able to hire people at Government scales to do this, or do you contract it out? How do you deal with the problem of Government pay scales perhaps being lower than in private industry?

Are you able to hire people who are competent to provide these services?

Mr. KELLY. Well, Senator, all of us sitting at this table see Government pay scales as a problem. But I would tell you that what we do is we utilize independent contractors to provide appraisal advice and marketing advice.

Senator PRESSLER. What about the people who you do hire on Government pay scales? Are you able to get the quality of people who can make judgments of handling millions, and, taken together, billions of dollars worth of assets? Are you getting the right people?

Obviously, you have a lot of confidence in them, but you probably hire a lot of people that you have to train on the job.

Is that not true?

Mr. **Kelly**. Well, that's not generally true, sir. I think that the people that we have been able to attract are, No. 1, they are temporary. The vast majority of them are temporary employees. They're on 1 year renewable appointments with the RTC.

The people that we have typically been able to attract have been two different categories. We've been able to attract some very, very bright, young individuals, capable individuals who are early in their career who want to come to work with the RTC in order to, in fact, have that on their resume. We encourage that kind of thing. We tell people all the time, come work for us 2 or 3 years, give us your best effort, and you leave with our blessing.

The other type of individual, and Bill Roelle has been particularly successful in attracting these for his managing agent program, and even on mine and Lisa's side of the fence, has been an individual at the end of their careers who are retired.

An example of that would be the chief contracting officer that we have here in Washington, a gentleman who spent 26 years with CSX and Burlington Railroads as one of their chief procurement officers.

So we feel very comfortable with the general level of employee we've been able to attract.

Senator **Pressler**. Thank you, Mr. Chairman.

The **Chairman**. Thank you, Senator Pressler.

Senator Sanford.

Senator **Sanford**. Thank you, Mr. Chairman. And let me thank all of the participants of the panel for coming and giving us the benefit of their information and wisdom.

I especially, Mr. Chairman, want to recognize and welcome a North Carolinian, Tim Hartman, who will testify on the next panel. We're delighted to have him here and I know he will bring us the benefit of his very broad experience.

Mr. Kelly, I've been a little bit concerned here in the last week or so by inquiring as to whether or not some of those 1988 deals that of course RTC had nothing to do with, might be re-examined.

Could we see if they were seriously to the disadvantage of the Government? Could we do something about it? The General Accounting Office tells me not much. The GAO has concluded that a deal is a deal and the mere fact that it was to the disadvantage of the Federal Government is not in itself a reason for setting aside or cancelling the contract. They conclude that if we tried to set aside these arrangements, such actions would put us to a tremendous financial cost because of the legal obligations of these deals.

But that brings me to the next step. Once the deals have been made, then you get the property.

What safeguards do you have to make certain that the Federal Government is not put at a disadvantage, as I see the Government having been put in some of these other arrangements?

You now are dealing, of course, with individual properties, not with institutions. But I think the same dangers exist—favoritism or the inclination to simply dispose of the property, get a fee and get out, an attitude that maybe if I do these people a favor now with this property, somehow it comes back as another benefit to me in the future.

What kinds of safeguards do we have in place to prevent the Government from being put at a disadvantage in sales of RTC property?

Mr. **Kelly**. Senator, we have established nine different mechanisms that we use in overseeing the activities of contractors.

One of the primary vehicles that we have is that the contractor is actually required to present to us a management and marketing plan for each asset.

The bottom line on each one of those plans is a cash flow, both on the expense side and the income side. And as a part of that plan, they have to lay out in considerable detail the marketing efforts that they will utilize in disposing of that property and the appraisal or valuation process that they will be utilizing in determining a value for that property.

With respect to the selection of the broker themselves, we have, again, a considerable number of vehicles that we're utilizing to ensure that all contractors that provide services to the RTC engage in a process that results in them certifying that they don't have any conflicts of interest. And No. 2, in general, with respect to the statutory conflicts, that they don't have any conflicts of interest with respect to that particular property. And that, again, we select through a selection process, we evaluate the technical competency of the people that are going to provide services to us and to make sure that we get the best person at the best price that we can get.

In addition to that, we are in the process of establishing what we call the contract cop. We're going to have a surveillance and enforcement unit here in Washington and each one of our field cities that will be primarily involved with checking backgrounds on contractors and actually going out and talking to individuals who have been involved in deals and to try to ferret out any wrongdoing.

We certainly hope, and we're taking every step that we possibly can to avoid any abuse of the process. But given the volume of contracting that we are talking about with the expected fees to contractors exceeding $1 billion a year, inevitably, there's going to be one or two bad apples in the barrel. There are going to be some incompetent contractors that get through the process.

Senator **Sanford**. There's not any question about that. My question, though, what are you doing to catch those bad apples and pick them out?

For example, if you had a sale to a brother-in-law at an advantageous price, that may not violate the law, and does it violate your contract with the broker?

And what would be your recourse if that happened?

Mr. **Kelly**. If it were a due sale, I think that the bigger issue would be one where there's a gray area in there if there's fraud involved in it, obviously, we take steps to try to recover the funds.

Senator **Sanford**. Well, there's not any fraud in the example that I gave.

Mr. **Kelly**. Right. In the case that you're talking about, we do have an inspector general and that inspector general will be sampling transactions. He certainly can't review all of them. But that inspector general will be sampling transactions to determine whether or not there have been any undue profits to any persons involved in it.

We have an internal review process that will be looking for the same kind of thing.

In addition to that, we have this contract a cop that I was talking about that would be going out and trying to ferret out those kinds of situations.

But in some instances where it's simply a sale for below value, I'm not an attorney, but it would seem to me difficult in the absence of fraud to recover some of those funds. But I can tell you that the broker that engaged in that kind of a transaction would never perform services for RTC in the future.

Senator **Sanford**. Might not need to.

Mr. **Kelly**. Well, if it were big enough, Senator, I would hope that we could initiate litigation to recover funds.

Senator **Sanford**. But my question goes 1 step further, I think. In the thrift rescue agreements, there was not the clause, apparently, or adequate provision that if certain improper steps or questionable steps were taken, or if too much was given away, or even if there were some slightly misleading representations, we didn't have enough in the contract to protect the government.

If the inspector general finds improper or questionable steps, what can he do other than slap him on the wrist and not let him do any other deals?

Mr. **Kelly**. Thankfully, the 1988 deals are not one of my responsibilities.

Senator **Sanford**. Of course not. I don't want to get into that, except as an example, and I'm asking, are you taking proper precautions which the Federal Home Loan Bank Board didn't take in negotiating the 1988 deals?

Mr. **Kelly**. Excuse me. Absolutely, sir. In all of our contracts, we have the right to require financial statements to do extensive audits of contractors' activities.

Senator **Sanford**. But if it's a misrepresentation and we've lost just a few million, can we get it back?

Mr. **Kelly**. I would hope so, sir.

Senator **Sanford**. But is the contract so drawn? I raise that question and when we get these scandals in the future, I hope that, if we do, that we will have taken the proper precautions within the contract themselves.

Thank you, Mr. Chairman.

The **Chairman**. Thank you, Senator Sanford. A very important area of discussion.

I would ask Mr. Kelly that if there are any other elaborations that we should have on safeguard mechanisms and clauses like that you're putting in contracts or anything else you think you need some other legal authority in hand to really strengthen your hand, we need to know that and we'll put it in any recommendation like that, we'll put in a legislative form and we'll give you additional authority and power if that's what you feel you need.

So I hope that you'll respond in any additional detail to what Senator Sanford has said, to the extent that we need to have your thoughts on that.

Mr. **Kelly**. I'll be happy to furnish for the record the discussion not only of our oversight program itself, but the clauses in the contracts.

The **Chairman**. I want to run through two or three things quickly. We've got other——

Senator **Sanford**. Mr. Chairman?

The **Chairman**. Yes, of course.

Senator **Sanford**. I want to apologize, especially to the next panel, but one of the burdens of this office is that we always have two or three committee meetings running. And I've got a conflict that will prevent my being here, but I again welcome Mr. Hartman to the committee and apologize that I will not be able to stay to hear his testimony.

The **Chairman**. Very good. I've got a couple of other things that I'm going to raise here.

In their prepared testimony, Century 21 Real Estate, who we'll hear from a little later, states that the average time on the market for residential property in metropolitan Texas is 90 to 120 days, but the RTC's average marketing time for houses is 180 to 300 days. What's your comment on their finding?

Mr. **Kelly**. Well, I wish I could tell you that I don't think that their finding is essentially correct. But as they say in the South, that dog simply won't hunt.

I would just simply state that a lot of those properties that we have taken over have been properties that have been held by the old institution for an extended period of time.

So to say that the RTC is responsible for the period of time that the institution held it is somewhat misleading. It certainly has been held a long time and certainly, one of Bill Roelle's and my first responsibilities in going into those conservatorships is to instill a disposition mentality with respect to properties that those institutions have.

We certainly are accelerating that process. We have standards for disposition of assets. And once those properties actually come under our control, the marketing process is accelerated dramatically and we, in fact, have been successful in moving those properties into the market.

I would just add, Mr. Chairman, if I could that, unfortunately, those institutions had a bent towards not disposing of some of those real estate owned properties because they were not interested in reflecting the loss associated with those properties on their books. That's the primary reason for a lot of those properties prior to the time that they came under RTC control, not having been aggressively marketed.

The **Chairman**. Now, I was reading a story yesterday, and you may have read it, too, or the day before, with respect to how the real estate auction is coming. And it looks as if that's kind of been on again, off again. And there's been some negative publicity about getting it off the ground.

Apparently, your plan is to try to move about $300 million worth of real estate that way.

Can you tell us where that stands at the moment?

Mr. **Kelly**. Mr. Chairman, the packets with respect to each one of those properties will be distributed this week. We certainly are very hopeful that that auction will go forward and be a success.

But candidly, we are engaged in trying to sell properties that in all instances are not class A properties. Certainly some of those properties are class A properties. The Centrust Tower in Miami is a very, very attractive property and some of the other ones are as well.

But any time that you get involved in auctioning commercial property of that magnitude, it's not a normal, everyday occurrence. But, frankly, we will have reserve prices established for those properties to protect windfall purchases. We think that we should try different mechanisms in order to move properties into the market on a bulk basis.

While the real estate brokers sometimes are not fond of large auctions like that, if you talk to the auction people, they will tell you that an auction, in fact if it's conducted properly, results in aggressive marketing process and, in effect, the auction process sets the market for a particular piece of property.

As I said, I think that the RTC should explore a lot of different things like that, as long as we have mechanisms in place to protect us against large windfall purchase on any individual piece of property.

The **Chairman**. So are you locked now on your date, and will it move again, do you think, or not, as to when this auction will occur?

Mr. **Kelly**. Well, Mr. Chairman, we have the key in the door. I can tell you that. We are very hopeful that the auction will proceed as announced.

The **Chairman**. In your accelerated resolution program, are you planning to try and increase the percentage of assets you sell when you sell the thrift deposits?

Mr. **Roelle**. Senator, I believe that's my area.

The **Chairman**. Mr. Roelle.

Mr. **Roelle**. We are trying to incorporate as many clauses into our standard contract as we can that would make assets more attractive to purchasers.

One thing that we are looking at now in conjunction with Mr. Kelly, we have asset review people also going in and looking at various segments of the portfolio, in particular, the one-to-fours. And later, we would hope to do it on the consumer loan portfolios as well, that we will provide reps and warranties as part of the sales package to the acquirer so that very limited due diligence would be needed to have the acquirers feel comfort in acquiring these assets.

In addition, we are looking at some of our contractors' asset reviews to see if, between the sales that have occurred out of receivership, the sales that have occurred out of conservatorship, and the assessments we're getting from our contractors who are helping us with our asset evaluations, if we can now start to put in the actual bid contracts more appropriate transfer value for segments of the portfolio to help them get a rough idea of what we think the condition of the portfolio is, without, on the other hand, giving the information on what exactly our upset price is.

So we are looking at a number of initiatives to try to make it easier and more desirable for acquirers to buy assets as part of the resolution process.

Something else that we've just initiated in the conservatorship program, along, again, with Mr. Kelly's folks, we are now bidding the assets at the same time we are bidding the institution, and we are allowing people who are not interested in running a financial institution to bid simultaneously with the acquirers of the institution on the assets or asset management contracts.

Now this is a pilot that we've just started. But we've undertaken several initiatives in just the last 3 or 4 months to try to pass as many assets as possible at the time of the resolution of the institution.

Having said all of that, we continue to experience I think an event that we can't do too much about because the market place is going to dictate that many of the acquirers who are buying financial institutions are, in fact, at the core deposit base, simply aren't going to be the ones that clear these assets off the market.

There are other considerations they must take into account, their own capital positions. They need to take into account the result of examinations after the fact in terms of reserve requirements that might be needed on these assets that they're acquiring.

And frankly, some of these financial institutions, while they are interested in increasing their franchises, really do not want to buy some of the assets that we're selling because they have a full plate of the very same assets themselves and they do not need additional concentrations in these assets.

So while we think we can do more and we hope to do more, I think it would be only fair to say that the financial institutions in this country are not going to by themselves solve this asset problem that we're facing.

The CHAIRMAN. Let me ask you one more question and the three of you can answer. And Lisa, you haven't had a chance to speak yet today, and I don't know if you would have a view on this or not.

But we've been getting testimony here the last several days from different people on other issues. But on the issue of where are we in terms of further erosion in the real estate market in the United States at the present time because we're seeing a lowering of values and a deflation many places.

Chairman Seidman, for example, has a map that is color-coded and more of the country is being coded in the red color, I think it is, which is the one where the real estate values are continuing to go down.

What is your perception, any of you, with respect to where we are in terms of a continued downward slope in real estate values generally across the country?

Do you have a feeling for that, Mr. Roelle?

Mr. ROELLE. Somewhat. I think we all have a feeling. I believe in certain segments of the country that we are seeing declining values in real estate.

I think Chairman Seidman has pointed out that certain segments of the country are in a downward move with regard to real estate.

I believe our experience, and I believe Mr. Kelly testified a moment ago, that in Texas, particularly in Houston and Dallas, we seem to have bottomed out there. In fact, there is a modest improvement in real estate values, particularly I think we've noted a real improvement with multi-family housing, apartment complexes, and what have you.

The **Chairman**. Is the same true with commercial properties?

Mr. **Roelle**. In some places, yes, and in some places, no.

I think what we've been experiencing out of conservatorship, and I think it's probably true for receiverships, in those markets where you had a huge amount of property, either already built or coming on line over the last couple of years. The absorption rates that we are looking at currently just simply is not going to clear the market in a very short period of time.

I think Chairman Seidman has testified, and I think it would continue to be our view, that the 1986 tax reforms had an awful lot of property out there that had value as far as taxes, but in terms of economic value, it was suspect. A lot of that property has ended up now being devalued as a result of the people who were advantaged by the tax shelters, getting out of those properties.

We have to make those properties economically viable. That means that somebody's going to take a loss on them.

The **Chairman**. Yes. You know, it's very interesting. I just want to put a footnote in here.

I've not seen a single article written that recaps the dynamics of what caused the collapse over the 1980's. But the Tax Reform Act, with its retroactivity feature which pulled the props out from under so many real estate investments in terms of pulling the economic props out from under them, was a major factor, was it not, especially in some areas of the country that were so heavily built, like Texas?

Mr. **Roelle**. Well, sir, I would not want to speak ill of those folks who pass our tax laws.

But my personal view is that they were not economically viable. I think the more damaging aspects of this was not whether it was a good idea to get rid of tax shelters or not because I think, in some cases, again, a personal view, that tax shelters and tax credits sometimes have a misallocation effect.

The **Chairman**. Right.

Mr. **Roelle**. But when you change that, there are——

The **Chairman**. There are going to be repercussions.

Mr. **Roelle**. Repercussions from adjustments to this can be perverse. It just so happened that at the same time those repercussions were occurring, we had a number of other activities occurring that simultaneously resulted in substantial overinvestment in real estate in an awful lot of markets.

The **Chairman**. If you go back to those earlier data that I talked about where you've got about 70 percent of your total RTC assets are within the State of Texas, and further, if you go back another step and see that about 67 percent of all of the S&L losses in the last 3½ years, roughly, are in State-chartered institutions in two States, Texas and California, Texas dominating, and then you pile in on top of that the regional recession from oil and agriculture problems in that area, the overbuilding because of the boom and the great enthusiasm in Texas, and then you bring in the tax changes and the retroactivity feature which pulled the props out from under so many of these construction projects where, on the basis of the tax savings and the tax benefits, made sense, but once those were gone, they were not economic.

You had within that witches' brew the makings to sort of blow the side right out of the system. So you don't have to be Sherlock Holmes to sort of go through the steps and see why it is, as you sit here today with $164 billion worth of book value assets, that 70 percent of them would be in one State where you had the pile-up of those conditions which were, in a sense, put together in the right combination, would give you today 70 percent of $140 billion worth of assets sort of cascading through the door.

I mean, there it is.

Mr. ROELLE. I think that's correct, sir, although I would point out that the way real estate trends are going in other markets, beyond the tax situation, which I think certainly exacerbated our problem, that simply, many of the allocative processes, the credit markets, a number of markets simply weren't working well during this process.

In part, in Texas, I think part of the problem was real estate was the only game in town for a period of time. Oil was on a decline. There wasn't much else to do. With loans, you had cutbacks in supervision during the 1980's. There's a whole raft of issues that contributed to this.

But we're seeing, even setting aside the tax situation, I think that in certain markets, we had not had a serious real estate problem in this country for sometime. You would have periodic slumps in real estate or flattening out.

But, typically, it had gotten over the years to be assumed that real estate was a no-lose investment. You might only get a 5 percent growth, but, on average, you were going to do better than that.

I think we found out now that that simply isn't the case.

The CHAIRMAN. Well, I agree with you. But let me move back to the other point because I'd like to get you and the others, and that is, if the Texas cycle has sort of played itself out and 70 percent of $164 billion, roughly, of assets you have are within the State of Texas, and maybe Texas has bottomed out and you're seeing a little bit of strength now in Houston and Dallas and so forth, and let's hope that's real and let's hope that lasts.

But we're seeing this real estate deflation occurring in other parts of the country. And so we may have other parts of the country that are now going to come into the resolution stream later than Texas did, as this real estate drop in values continues other places.

I'd like your feel, all of you, for what that looks like in places other than Texas by region. How does California look? I know New England has got its problems. I know this area has got its problems.

Every day I read about another major builder or financial institution here that is being pushed into a very awkward situation.

So what's happening out there in the rest of the country right now? What do you feel? I mean, what are you sensing?

Mr. Kelly, do you have a thought on this?

Mr. KELLY. Mr. Chairman, 9 out of the 10 States with respect to commercial bank performance, 9 out of the 10 States that experience the highest growth in troubled or noncurrent real estate loans were either in the Northeast or on the East Coast.

Texas has experienced a decline in noncurrent real estate loans. Alaska has experienced substantial decline. California is pretty much leveled out at this point, but California continues to experience substantial growth in the volume of loans that they're extending in the real estate sector out there.

The CHAIRMAN. In other words, loans that are behind. In other words, problem loans.

Mr. KELLY. Well, no. California's problem loans are fairly stable. That's with respect to commercial banks. But California, I don't recall the number. I've got the chairman's review here. But the volume of outstandings in California as far as real estate loans in general has increased substantially. But the number of noncurrent loans in California has remained relatively stable.

The CHAIRMAN. So you don't see people falling behind on their payments and such as that.

Is that what you're saying?

Mr. KELLY. Well, as Bill Roelle indicated, the problem with this whole thing, and it's symptomatic of what you're seeing here in the DC area, is that the problems sometimes lag substantially behind what you experience, what you see, from all indicators, that is, noncurrent status, and so forth.

So I would just say that, with respect as to what happens in some other areas of the country, I think that it depends on the economy in general, frankly.

And as to whether this so-called rolling real estate recession will roll to other areas of the country, well, I certainly hope it does not roll to other areas.

The CHAIRMAN. We all hope it doesn't. The question is are you seeing evidence that it is?

Mr. ROELLE. Let me comment on your last question about what will come to the RTC.

I think a lot will depend on how much concentration individual institutions in these markets have in real estate. If there hasn't been substantial concentration and if there's a wide enough distribution on the builders, for example, who have loans so that no individual institution results in a failure because of a default on loans—that doesn't mean that there won't be losses associated with poor real estate investment, but will those losses ultimately end up either with the FDIC or the RTC as a result of the financial institution failing?

I think a lot will depend on how concentrated the lending has been and whether that concentration would be enough to take down an institution.

In addition, even with real estate slumping in some of these markets, ultimately, what will dictate is the amount of real estate that we actually end up with relative to absorption rates over the near term on what the impact is going to be on the institutions. I don't think we know that real well in all these markets.

Another factor that is very hard to get a handle on right now is we know what noncurrent loans are. But we are also trying to track foreclosures. We're also trying to track restructurings to find out what the real estate market is really doing.

Do we have a situation where noncurrent loans are being restructured, becoming current, below market rates? Is there a substantial increase?

We're also trying to tie in foreclosures and property in foreclosure to get a total picture of what the real estate situation is.

I believe Chairman Seidman has indicated again that in some parts of the country, it is definitely not as positive as any of us would like to see.

In other cases, S&L's aren't necessarily as heavily into real estate as they were in Texas. And even in California, where we've had real estate failures, as you know, some of their investment in real estate, and substantial amounts of their investment in real estate, were not in California. They were much as all of the S&L failures, even in the Midwest and the East Coast. We found that much of the investment was in Texas and Arizona and Oklahoma and so forth.

So that needs to be sorted out.

We know where the institutions are. But the real estate isn't always in the same place.

So we're looking at all of that. I don't think we have any definitive answers for you today. But we're certainly watching it. And I know that the FDIC is watching it much more intensely than we are because, after all, we're a receiver for the most part. But I believe that Chairman Seidman has taken a great deal of interest and continues to watch almost on a daily basis the reports that you've seen in our quarterly reports and the information that's gathering there.

The CHAIRMAN. Yes. Finally, can you tell us what your plans are for the disposition of your junk bond portfolio?

Ms. SPECTOR. Yes, we can. We have been selling our junk bonds consistently. And with the possible disruption in the Middle East during August, and what's happened in the market since then, we were probably up to a level of about selling perhaps $150 million per week of our junk bonds before August, and we're getting back up to that level again now.

I think, to the extent that continues will really be reflective of the markets generally. You will, however, see increases to the extent that we have, if you will, bulk sales of junk bonds either because we have some very large holdings that might be sold and therefore, we could sell one loan, if you will, one security, but have a very substantial sale.

That's certainly increasing now because we are being able to analyze the credits and respond to offers that we may get.

So I would say that they are increasing. We are presently going to be engaging a junk bond adviser, probably within the next 2 weeks. There's a solicitation of services outstanding that's due back tomorrow. One of the things that we will certainly be looking at with that advisor would be substantial bulk sales of large blocks of our portfolio.

The **Chairman**. Well, thank you all for your testimony. We've got another panel coming up. I'll have some questions for the record, I think, from myself and from other members. But we appreciate the work you're doing and your testimony today and we'll see more of each other.

Mr. **Roelle**. Thank you.

The **Chairman**. Thank you.

Let me now call to the witness table, Tish Gonzalez from the Texas Housing Agency, Timothy Hartman from NCNB in Texas, chairman there, and Martin Rueter, who is the senior vice president of Century 21.

Let me welcome our second panel of witnesses. Mr. Hartman is chairman of NCNB, Texas National Bank. It is probably the world's second largest asset disposition team behind the RTC.

Century 21 Real Estate, where Mr. Rueter is the senior vice president, was involved in 15 percent of all home sales in the country last year.

And Tish Gonzalez is the executive administrator of the Texas Housing Agency. Again, we've stressed many times this morning, the size of this problem that is centered within the State of Texas under the control of the RTC.

So we very much look forward to the observations and advice and counsel of these witnesses.

And Mr. Hartman, has he just stepped out for a moment? All right.

We'll get started without him. Mr. Rueter, let's go with you.

STATEMENT OF MARTIN RUETER, SENIOR VICE PRESIDENT, CENTURY 21 REAL ESTATE, IRVINE, CA

Mr. **Rueter**. Yes, sir. Thank you, Mr. Chairman.

The **Chairman**. We'll make your full statements, by the way, a part of the record. So, in the interest of time, I'm going to have you summarize the points you feel are most important for us.

Mr. **Rueter**. OK. I also appreciate the opportunity to be here to really examine this formidable task that the RTC has before it.

Century 21 Real Estate Corporation can provide the analysis and, to a large extent, the resources which should be used in approaching such a task of disposing of this huge portfolio.

As you mentioned, we do have 6,000 offices in the United States, another 1,500 throughout the world. We employ more than 80,000 full-time sales people and brokers. And as you mentioned, we are involved in 15 percent of residential sales transactions in the United States.

My role here today is to speak on behalf of the real estate community. My personal experience is one of having worked in the real estate business for a 90-year-old real estate firm. I have personally been in the business for some 30 years, 13 of which I've been with the Century 21 system.

My responsibilities as senior vice president include all of our sales and management training, our relocation programs, and business development.

I spend a lot of time with our real estate brokers, a lot of time with lenders, and a lot of time with consumers. As a result, I think

I can speak from a broader perspective of the national real estate market and more importantly, the way that real estate is being handled specifically with the Resolution Trust Corporation.

As you have all agreed, the RTC has an awesome assignment, as they say in California. It's extremely difficult. My criticism today has nothing to do with the people of RTC. We've found them to be extremely competent, very, very dedicated. But the system seems to be stifling them and shackling them in fulfilling this responsibility.

Our advice today, in its simplest form, is, first, to use the real estate industry as was outlined in FIRREA, to use the private sector, to get a handle on what is owned by the RTC.

Second, to streamline procedures at the local level so that the RTC sales efforts are more broker- and buyer-friendly.

In your invitation to testify, you asked us to recommend marketing strategies and to comment on the appraisal process that is currently being handled by the RTC, and also to focus on the real estate market in Texas. And I am prepared to give you lots of information on that.

My first two topics deal with the marketing and the appraisal because I believe that they are so much interdependent that you can't separate them.

You can't talk about marketing and selling real estate without discussing the price. You can't consider the price unless you have specific directions as to whether you are willing to take a loss, what is your desired marketing time, are you willing to offer financing? And it's the unclarity of the instructions to the appraisers and to the real estate brokers that are messing up the pricing process.

In setting up the RTC, Congress went along with a typical bias towards the independent appraisal process. The generally take the form of real estate appraisals which are performed by certified folks, people who know how to appraise property.

It's our opinion, however, that with residential properties, the point of getting formalized appraisals is not only time-consuming and costly, but in many cases, it's not accurate. It does not accurately reflect the market as it exists now.

One problem does lie with the appraisal process. With residential appraisals, the appraiser relies on past sales data, which, in many cases, is incomplete or insufficient to properly evaluate real estate under today's marketing conditions.

The appraisers are not in a position to talk to enough buyers, to enough lenders, or to enough real estate sales people to get an accurate reading on the pulse of each neighborhood, each housing type or each and every floor plan.

The real estate market is not one which can rely solely on historical sales for its conclusions, particularly when those sales are few and far between.

What is just as important is an understanding of outside marketing conditions, including financing, tax incentives, buyer taste, and the sincere desire of the seller to move the property.

This information is first-hand. It's local. And it's timely. And unfortunately, the appraiser is not getting enough of it. They're using old data and mathematical equations to evaluate property that often have very little relevance in the marketplace.

Rather than to evaluate property backwards, we believe that a more current, futuristic approach would be much more efficient and more effective. This approach is utilized by the real estate community now. It's called a Broker Price Opinion.

While this analysis does include an evaluation of past sales, it also looks at current data on properties that are already on the market. Really, it's competition. It also looks at expired listings, which buyers were not willing to pay for properties. The average selling time on the market, trends in financing, whether interest rates go up or down has an effect on people's willingness to buy, and specific marketing recommendations such as repairs.

We even analyze who's the most probable buyer and target our market strategy towards the most logical buyer for this kind of property.

This approach has much greater validity because it is rendered by a local real estate broker who knows the areas and, in many cases, has shown the other properties that have been used as a basis for comparison.

Our experience in corporate relocation which utilizes both formal appraisals, plus broker price opinions, confirmed that in nearly every case, the broker is more often more correct than the appraiser.

So our first recommendation is to use the real estate industry to get an accurate assessment of RTC assets, and this is residential, and what it will take to market them by obtaining a broker price opinion, rather than to rely solely on traditional appraisal methods.

With very few exceptions, these broker price opinions can be obtained free of charge and in less than one week.

In assigning properties, whether it's to an appraiser or to a real estate broker, the RTC must be much more clear, much more specific as to the purpose of the evaluation, including its tolerable marketing time, from listing to sale to actual closing, because this does have an effect on what your asking price is.

They need to give clear instructions: Should the property be evaluated in its current condition or after repairs? Will special financing terms be available?

These answers make a big difference in establishing the price range and the most probable selling price.

In the case of the Century 21 system and other national firms, we are always looking at current data and can supply additional data to the RTC, not just on past activity, but on activity that occurred yesterday, on sales pending—open sales, we call them—that haven't closed yet, but the majority of them will. Plus, we can give important demographics on the most probable buyers for properties to really better target the marketing strategies.

With respect to the State of Texas, it is a big market. There is more than 200,000 homes for sale in Texas right now, 7½ percent of the homes in the United States are in the State of Texas right now.

The CHAIRMAN. That are for sale?

Mr. Rueter. Yes. There will be about 250,000 sales of singlefamily residences, including condos, in 1990, it is our figures as we're seeing them right now, which represents about 7 percent of all sales in the country.

While the $10 billion of Texas real estate is a large amount, home sales in Texas for the entire year will be between $20 and $22 billion. Total real estate sales will be between $35 and $40 billion.

The real estate market should be able to absorb most of the RTC inventory without a lot of pain, provided certain steps are taken to streamline the sale process.

Texas is indeed a very diverse market. The homes in Dallas average around $90,000. In Abilene, about $37,000. In many rural areas, of course, prices are even lower.

While some markets are still slow, most Texans now live in markets where home prices, the rate of sales activity, and constructions is increasing.

As Mr. Kelly stated, Texas is alive and well and coming back.

Our experience in Texas, however, does give us a basis for our second recommendation, which is namely, to streamline procedures at the local level to encourage brokers and buyers to do business with the RTC.

The RTC will sell more real estate at a better price if it keeps these procedures simple, flexible, and consistent with existing good business practices as they exist in the real estate markets. These procedures must recognize the diverse nature of the market so that the sale of a $50,000 house is not subject to the same rules and procedures used for a multimillion dollar office building or an apartment complex.

The ability of the local RTC staff to make decisions is burdened by a well-intentioned system that stifles rather than encourages the sale process.

For example, preapproval is mandatory for even minor repairs or maintenance. Procedures and document requirements vary from lender to lender. Paperwork is extremely burdensome. Trying to get answers, as we've seen, can take months or weeks.

The results are that few agents really want to bother to show RTC properties. The average marketing time, which is confirmed by our own sales report for homes in Texas, is between 90 and 120 days. Our survey number on RTC properties of 180 to 300 days is a survey of our real estate brokers. Admittedly, there's a lot of frustration in that assessment and admittedly as well, some of that is the entire holding period of the asset prior to the RTC taking it over.

But this time can be reduced by just making sure that the property is in good shape and is attractive to be shown to a buyer.

In surveying our Texas brokers last Friday, they had a lot to say about the RTC. They mentioned the inability to do repairs because of the need to produce a case study for such repairs, along with the submission of three bids. Even when approved, bills can take 60 days or more to be paid.

We have property in San Antonio that has no power because the electricity has been turned off because the bill hasn't been paid.

Showing property in Texas in the summer in the dark without air conditioning is not something that a real estate agent really wants to do.

The CHAIRMAN. It's not the way to get the price up, is it?

Mr. RUETER. Not the way, or buyers don't feel like staying in the property too long to see it, either.

Or the broker in Texas expressing the frustration of being asked to change the locks on a property in July. While the broker continues to wait for a decision as to what we're going to do with the property, the unit is still off the market, it's vacant, it's being vandalized, which makes it even more tough to sell.

Another broker spoke of the simple sale of a $47,000 house which had to be approved by a regional RTC committee, plus 4 attorneys, who could not agree on the proper purchase offer form. The result was a 33-page contract for a $47,000 house that required the buyer to sign it again 4 times.

I have copies of those contracts with me.

The CHAIRMAN. You know, you can't hire 4 lawyers to work on something and not have it cost you $47,000. We probably spent as much on the lawyers as we got for the house.

Mr. RUETER. Well, curiously, in the State of Texas, the State of Texas has a promulgated real estate form that's been set forth by the real estate commission which is used by real estate brokers universally in Texas which should be very, very sufficient, with maybe one or two add-ons. But the add-ons have gotten to about 20 pages now.

The RTC has admitted that they will try to answer all offers within 30 days. I think it's unrealistic to expect the homebuyer to wait a month just for an answer on their offer when there's other competing properties available.

The CHAIRMAN. Right.

Mr. RUETER. Real estate agents feel the same thing. They're out trying to earn a living selling real estate.

The reason for reciting these examples is to show that the sales operations need to be more sales-oriented. There has been a well-qualified advisory board established by the RTC to assist in the sale of properties, but it's our understanding that the board hasn't met yet.

It's exactly the kind of resource that the RTC needs to rely on more often.

We feel that there could be vast improvement in the disposition effort if RTC would work with the local real estate professionals to get the units on the market quickly. The authority to do so should come from local RTC officials operating under reasonable guidelines which automatically allow for the acceptance of offers and counter-offers, which allow automatically for the making of repairs and the exercise of prudent business judgment as necessary and appropriate.

The streamlining would encourage real estate brokers and agents to do business with the RTC. The success of these offices in selling properties at close to the appraised value should be a determining factor in awarding future business to them.

Results, in other words.

In addition, documentation such as listing agreements and sales contracts should be simplified and standardized not only to comply with local legal requirements, bu also with existing local practices.

The RTC could also look to a Federal system already in place. It's called HUD, FNMA, and Freddie Mac. Our brokers in Texas tell me that sales using this system bring in about 90 percent or more of the appraised value, after commissions. And in some cases, offers are received in excess of the asking price.

All of this is done with as little as a 2-week marketing period.

These more streamlined procedures are well received by the brokers. They deem them to be fair. They do not appear to have had a negative effect on the market.

I brought with me a purchase offer which is used by the VA on its repossessed properties. It's a simple one-page front and back. And I also brought with me an offer that was submitted by one of our brokers in Texas on an RTC property, residential property, which is 30 pages.

It doesn't take a rocket scientist to figure out which one a real estate broker is going to spend more time on, particularly when there's a glut of property, all looking the same, and the VA properties are already in good condition in most cases.

Some final comments.

There's been a great deal of concern expressed by many on the effects of dumping real estate in an already depressed market. The Texas brokers I've interviewed are more concerned about the long-term effects of too many unsold, vacant units—dumps, they call them—which are deteriorating and languishing on the market than any short-term effects caused by a rush of RTC sales.

They prefer their economic pain in quick, but nonrecurring doses. Let's get it over with.

Real estate networks such as Century 21 and other national real estate networks can add a degree of technological innovation to maximize the promotion of RTC properties.

Back in February, our company provided the RTC with an unsolicited proposal to conduct what we call the investment connection, or a teleconference and satellite transmitted real estate marketing session at no additional cost, other than the broker's real estate commission. Open to consumers, all investors, and all other real estate brokers.

The process would be accompanied by extensive advertising and other publicity at no cost to the Government. The offer is still open. The private sector is ready to help.

What we are advocating is not a circumvention of the appraisal process, nor an abandonment of the safeguards of the taxpayers' maximum recovery on these assets. Rather, our recommendations are based on existing business practice and existing private sector incentives to sell real estate without damaging the surrounding market place.

We are looking to the RTC to use existing resources and information already available and proven successful in moving real estate.

The real estate industry is ready. It's willing. It's able to play an important role.

Thank you.

[The complete prepared statement of Martin J. Rueter follows:]

TESTIMONY OF MARTIN J. RUETER
SENIOR VICE PRESIDENT
CENTURY 21 REAL ESTATE CORPORATION
BEFORE THE SENATE BANKING COMMITTEE
SEPTEMBER 15, 1990

Mr. Chairman, Members of the Committee, I appreciate the opportunity to appear before you today as you examine the formidable task facing the Resolution Trust Corporation (RTC). As a leader in the real estate industry with a nationwide, as well as worldwide, presence Century 21 Real Estate Corporation can provide the analysis, and to a large degree, the resources which should be used in approaching such a task. We hope our recommendations will be helpful as Congress oversees the asset disposition process.

The CENTURY 21® system consists of some 6,000 offices in the United States (7,500 offices worldwide) and more than 80,000 full-time brokers and sales associates. Presently, we are involved in more than 15% of all home sales in America, last year representing some 800,000 individual transactions. As the Senior Vice President for Regional Development at our International Headquarters, my responsibilities include business development, sales and management training, recruiting and relocation programs for CENTURY 21 offices worldwide. My extensive travels and almost daily communications with real estate professionals, lenders and consumers over the past 13 years with the CENTURY 21 organization allow me to view the real estate marketplace from a broad perspective. In addition, my personal experience in real estate goes back to the early 1960s, when I started out in my family's 90-year-old real estate firm. It is the combined expertise of the CENTURY 21 organization and my own real estate background which I rely on today in my discussions of the RTC and the task Congress has set for it.

I think we all must first recognize that the RTC has been given a most difficult assignment. Its success will depend in large part, I believe, on its use of the private sector. Our advice today in its simplest form is, first, to use the real estate industry private sector "to get a handle on" the assets held by the RTC. Once that is accomplished, the private sector, including appraisers and real estate brokers, can be given appropriate instructions on how to value and dispose of the RTC properties at a fair price. Our second recommendation is to streamline procedures at a local level so that RTC sales efforts are more broker and buyer friendly -- which should result in more sales being successfully completed.

In Chairman Riegle's invitation to Century 21 Real Estate Corporation to testify on the RTC asset disposition process, he asked for our recommendations for marketing strategies to be used by the RTC and comments on the RTC's appraisal policies. We have also been asked to discuss the real estate market in Texas. The Texas market will be part of our discussion on streamlining procedures. I would now like to combine the first two topics for the moment since they are so very much interdependent and since they provide the key to our first recommendation on the efficient use of the private sector. One cannot talk about marketing and selling real estate without consideration of price. Conversely, it is quite difficult to pinpoint fair market value without first assessing the real estate purchasing and financing environment which can change almost daily.

The legislation Congress enacted to address the problems in the thrift industry, known as FIRREA, reflects Congress' strong bias toward independent evaluations of property under the control of the RTC, so that assets would seemingly be disposed of at a fair price, with the maximum return to the government and therefore the taxpayer. These independent evaluations generally take the form of a formal real estate appraisal performed in most part by certified real estate appraisers. As a real estate professional, it is both my opinion and judgment that, while appraisals may at some point be necessary in verifying the value of an asset, they can be time consuming and costly even on a wholesale basis, and may be inaccurate due to the nature of the instructions given to the appraiser.

One problem lies with the appraisal process itself. With most residential properties, appraisers rely on past sales data, which unfortunately may be incomplete or insufficient to evaluate real estate subject to today's market conditions. Appraisers are not in a position to talk to enough prospective purchasers, enough lenders or enough real estate sales people to get an accurate reading on the pulse of each neighborhood, each housing type or each and every floor plan. The real estate market is not one which can rely solely on historical sales for its conclusions, particularly when those sales are few and far between. What is equally important today is an understanding of outside market conditions, including available financing, tax incentives, buyer tastes and the desire and urgency of the seller to sell the property quickly. Without such information -- first hand, local and timely -- the appraiser operates in a vacuum, using old data and mathematical equations which have little relevance in depreciating markets with disincentivized investors. In many cases, appraisers seek out the truly relevant information from local real estate brokers.

Another problem lies with the manner in which appraisers' services are used. When the RTC takes over a lending institution, it usually disregards existing property appraisals and begins another costly process of re-evaluating its assets, oftentimes using the same appraisers. An appraiser who receives such a deluge of appraisal assignments generally has little time to research thoroughly all comparable sales, much less consult with local real estate brokers. In many cases, the appraiser must farm out work to other appraisers or assistants, many of whom may not be familiar with the specific neighborhood or property types. As a result, appraisals are not as accurate as they should be; often they are too high.

Rather than evaluating property retrospectively, a more current and market-oriented approach would be more efficient and effective, and the RTC should be encouraged to use it. This approach is generally included in a real estate broker's competitive market analysis or Broker's Price Opinion ("BPO"). While this analysis employs part of the appraisal process, namely an evaluation of past sales, it also includes current data on competitive properties already on the market, expired property listings, average time on the market, financing trends and specific marketing recommendations, such as suggested repairs -- there's even an analysis of the "most probable" buyer. This approach generally has greater validity because it is rendered by a local real estate professional who knows the area and the particulars of the specific property. Moreover, a real estate broker is willing to bet sizeable advertising and marketing dollars to prove himself correct. Our experience with corporate relocation firms which utilize both appraisals and Broker Price Opinions of market value in purchasing employee homes suggests that broker evaluations (BPOs) are more predictive and accurate.

This brings me to our first recommendation: **Use the real estate industry to get an accurate evaluation of RTC assets and**

what it will take to market them by obtaining a Broker's Price Opinion on each property, rather than relying solely on a traditional appraisal. With some exceptions, these BPOs can be obtained free of charge and in less than one week.

In assigning properties either to an appraiser or real estate broker, the RTC must be able to give clear instructions as to the purpose of the evaluation, including a desired marketing time -- from listing to sale to actual closing. Should the property be evaluated "as is" or after repairs? Are special financing terms available? These answers make a difference in establishing a price range and the most probable selling price. Additionally, real estate brokers and sales associates, especially those belonging to worldwide organizations such as the CENTURY 21® system, have access to an existing network of real estate brokers and sales associates with specific expertise in all property types and all areas of the country. In the case of the CENTURY 21 system, and many other national real estate firms, this network of expertise is also a network of information, not just on past sales which have closed, but on sales pending, including trends in pricing and financing, plus important demographics including profiles on the purchasers or likely purchasers of these properties. These resources are available to the RTC and can be tapped in all stages of the asset disposition process from evaluation of its holdings, to the development of a realistic marketing strategy, and for the implementation of that plan.

Century 21 Real Estate Corporation has also been asked to provide information on the real estate market in Texas, since the majority of RTC assets are located there.

Clearly, Texas is a big market -- much more than just a collection of troubled properties. Right now, there are more than 200,000 homes for sale in Texas: 7 1/2% of the homes for sale in the United States, a figure which is consistent with Texas' 7% share of the U.S. population. There will be about 250,000 sales of homes, including condominiums as well as traditional single-family homes, in the state this year -- again about 7% of all the home sales in the nation. While the $10 billion of Texas real estate in the RTC portfolio is a large amount, home sales in Texas this year will total $20-22 billion, and total real estate sales will total $35-40 billion. The real estate market should be able to absorb most of the RTC inventory, in most local markets, without undue pain -- provided certain steps to streamline the process, which I will outline below, are taken.

Texas is also a diverse real estate market, like most other large states. The typical home in metropolitan Dallas is selling for more than $90,000, while in Abilene the typical home is selling for $37,000. In many rural areas, of course, prices will be even lower. Similarly, 4% of metropolitan-area home sales in Texas so far this year have been for $250,000 more, while 5% have been for less than $20,000, and 40% have cost less than $50,000 -- and, again, prices in rural areas tend to be even lower. While some markets are continuing to be depressed, most Texans now live in markets where home prices, the rate of sales activity, and the amount of construction are increasing. Our data, along with real estate industry and construction industry data, show that the Texas market, and especially Houston, has been strengthening this year, in contrast with the situation in the Northeastern United States.

Our experience in Texas has led us to make our second recommendation: **Streamline procedures at the local level to encourage brokers and buyers to do business with the RTC.** Congress has wisely recognized that the process of disposing of billions of dollars worth of assets provides endless opportunities for fraud and abuse. While the RTC must recognize this concern and safeguard the process, the RTC will be able to sell more real estate at a better price if it keeps procedures simple, flexible, and consistent with existing good business practices, which include enhancing the value of the property through modest upkeep efforts and responding quickly to those interested in RTC properties. In addition, these procedures must recognize the diverse nature of the market so that the sale of a $50,000 house is not subject to the same rules and procedures used for a multimillion dollar office building or apartment complex.

The ability of local RTC staff to make decisions is burdened by a well-intentioned system that stifles rather than encourages the sales process. For example, pre-approval is mandatory for even minor repairs or maintenance -- carpet cleaning, touch-up paint, replacing broken fixtures. Procedures and document requirements vary from lender to lender; paperwork is extremely burdensome; trying to get answers may take weeks or months. The results are that few agents wish to show RTC properties. According to interviews with our Texas Regional management and with individual CENTURY 21® real estate professionals, the average marketing time for properties in metropolitan areas of Texas is in the range of 90 to 120 days. Unfortunately, with RTC properties, average marketing times are more in the area of 180 to 300 days. This time could be significantly reduced just by making sure the property is in generally good repair, the lawn is mowed, and the utilities have been paid so that the property will show well.

We feel there could be vast improvement in the disposition effort if the RTC would encourage the use of local real estate professionals to help get units on the market quickly. The authority to do so should come from local RTC officials operating under reasonable guidelines allowing for the acceptance of offers and execution of counter-offers, making of repairs and exercise of prudent judgment as necessary and appropriate. This streamlining would encourage real estate brokers and agents to do business with the RTC. The success of these offices in selling their properties at close to the appraised value -- arrived at according to our previously recommended procedures involving Broker's Price Opinions -- should be a determining factor in awarding future business to the real estate professionals who assisted the RTC in these sales. In addition, documentation such as listing agreements and sales contracts should be simplified and standardized not only to comply with local legal requirements but also with existing local practices which have been proven over time to sufficiently safeguard the parties involved without excessive paperwork.

The RTC can also look to the procedures and documents used by HUD, FNMA and FHLMC to dispose of their properties, and the steps they have taken to limit unnecessary steps. Under some of these systems, CENTURY 21® real estate brokers in Texas report that sales results net on the average close to 90% or more of appraised values, after commissions, and that in many cases offers are received in excess of the asking price -- all of this over as little as a a two-week marketing period. These more streamlined procedures are well-received by brokers in those areas and do not appear to have had a negative effect on real estate values.

I would like to make some final comments on various asset disposition strategies and policies. There has been a great deal of concern expressed by many on the effect of "dumping" real estate on already depressed markets. The Texas brokers I have interviewed are more concerned about the long-term effects of too much unsold vacant property deteriorating and languishing on the market, than any short-term effects caused by a rush of RTC sales. They prefer their economic pain in quick but non-recurring doses. The next issue is the use of auctions as a sales technique. We see that the RTC has turned to auction houses to dispose of major assets. While auction and similar "bulk sales" strategies have some merit, the first national auction has yet to be held, and the brokers interviewed have reported that some local auctions of residential real estate have not resulted in the achievement of market prices. Our strong conviction is that traditional real estate brokers can do as good or better a job at less cost, in less time.

Real estate networks such as the CENTURY 21® system can also add a degree of technological innovation to maximize the promotion of properties. For example, back in February, our organization provided the RTC with an unsolicited proposal to conduct teleconferenced and satellite-transmitted real estate marketing sessions, at no additional cost other than the broker's real estate commission -- open to consumers, investors and all other real estate brokers. This process would include extensive advertising and other publicity, provided at no added cost. The offer is still open. In addition, if we really want to foster home ownership and real estate investment, we need to further incentivize the purchase of these properties through more attractive mortgage rates or renewed tax incentives for investors. Features such as these help to stabilize prices, if not enhance them.

What we are advocating is not a circumvention of the appraisal process, nor an abandonment of the safeguards for the taxpayers' maximum recovery on RTC assets. Rather, our recommendations are based on existing business practices and existing private sector incentives to sell real estate without damaging the surrounding marketplace. We are looking to the RTC to use existing resources and information already available and proven successful in moving real estate. The real estate industry is ready, willing and able to play an important role in resolving this national dilemma.

Thank you for inviting me to appear today. I will be happy to answer any questions you may have.

The **Chairman**. Well, it's a very good presentation. I appreciate it.

Do you know if Century 21, for example, has been approached by the RTC for ideas and suggestions like this?

Mr. **Rueter**. We went to the RTC in November and made a presentation offering possible solutions.

The **Chairman**. Did you initiate that or did they?

Mr. **Rueter**. Yes, we initiated it.

The **Chairman**. Yes?

Mr. **Rueter**. I was one of the presenters, along with our marketing staff.

The **Chairman**. Right.

Mr. **Rueter**. It's not just Century 21, Senator. Other private real estate companies have the resources to do all of this.

The **Chairman**. No, I understand. So what kind of a response did you get?

Mr. **Rueter**. We'll get back to you.

The **Chairman**. Have they gotten back to you?

Mr. **Rueter**. No.

The **Chairman**. Because I think a number of the suggestions that you've made are very useful ones, and I think we do need to get some real time, hands-on, private sector know-how and capacity into this system. That's always the question and problem. How do you get a Government agency to have that kind of flexibility and adaptability and so forth?

I thought you made an excellent point, though, with the fact that other agencies of Government that have been around for a long time have had to figure out how to do this. I mean, the VA does it. There are other agencies that do it. They have procedures. They've been standardized. And we really don't need to reinvent the wheel here.

Mr. **Rueter**. We really don't; and it's also deemed by the brokers to be very fair. They have a lock box. They show the property. They submit offers on Tuesday. The following Friday, they have an answer.

As a result, there are homebuyers buying homes instead of investors for speculation purposes.

The **Chairman**. Yes, right. Well, that's what we want. I want to get speculators out of this and the homebuyers into it.

Mr. **Rueter**. And the sales are going up.

The **Chairman**. Well, we'll pursue that. That's a very good suggestion.

Mr. Hartman, let's hear from you now. The hour is a little late, so we're going to make your full statement a part of the record and I'm going to have you summarize as best you can.

STATEMENT OF TIMOTHY P. HARTMAN, CHAIRMAN, NCNB TEXAS, DALLAS, TX

Mr. **Hartman**. Thank you very much, Mr. Chairman.

I am Tim Hartman. I'm chairman of NCNB Texas National Bank.

I appreciate the invitation to visit with you this morning.

Because of the nature of the transaction that brought NCNB to Texas, the bulk of our workout experience has been with the Federal Deposit Insurance Corporation rather than the Resolution Trust Corporation. Our belief, based on the past 2 years' operations, is that the policies and procedures we have developed in concert with the FDIC have served both the public and the Federal Government well.

Our collecting bank, Financial Resource Management, Inc., is a separate, whollyowned subsidiary which manages and collects troubled loans of the former First Republic banks for the FDIC.

Formal policies and procedures for the collecting bank were developed in conjunction with the FDIC and are available to the committee for review.

In supplement A, we have filed with the committee the portions of those policies and procedures which were previously supplied less than 2 months ago to the House Committee on Banking in its field hearings in Austin.

In response to your question regarding loan workouts, let me say that, first, consideration is always given to pursuit of a troubled loan's full debt repayment if we can determine that the borrower has the financial means to repay.

Obviously, the Texas economic downturn of the past several years—from which we are now beginning to rebound—has seriously reduced the financial capabilities of the majority of borrowers. In the cases where reduced financial means can be substantiated, restructuring becomes our next consideration.

Our experience convinces us that restructuring with the original borrower provides the best route to resolution of troubled loans where ability to repay according to original terms no longer exists.

In order to conserve time, I will not review an example of a restructuring. It is included in detail in my prepared statement from pages 3 through 7.

FRMI, our collecting bank, began collecting troubled loans in late 1988. In the 20 months ended July 31, 1990, collections totalled $3.7 billion, which represents 59 percent of the original estimated recoverable amount at January 1, 1988.

Our 1990 plan is to collect more than 40 percent of the year's beginning book balance of approximately $4½ billion.

Whenever possible, we have avoided the use of an adversarial foreclosure process in the resolution of troubled loans. The strict collection policy requirements of the FDIC notwithstanding, the FRMI loan workout strategy has achieved outstanding collection results, while keeping contested foreclosures to approximately 4 percent of the beginning available asset pool.

Collections through restructure or payments from FRMI borrowers have accounted for approximately 90 percent of our $3.7 billion in cash collections. Less than 10 percent of collections came from the disposition of other owned assets.

The servicing agreement with the FDIC requires an oversight mechanism that facilitates private sector initiative in the workout process. We believe that this oversight process should be a model for RTC collecting procedures as well.

The model is very simple. FRMI personnel manage and the FDIC oversees their actions much as a board of directors would in a corporate environment.

It is worth repeating that, to date, the majority of collections have been accomplished by restructuring loans with original borrowers based on those borrowers' ability to repay. Our experience has proven this process to be much less expensive than the adversarial foreclosure alternative.

This is because the foreclosure necessarily involves property deterioration, the effort to resell the project, the time consumed to complete the transaction, and the distinct possibility of extended litigation.

With reference to your question concerning Texas lending, the State's economic recovery has begun. Banking's role in a growing economy such as we have in Texas is to provide a strong capital base that will instill public confidence and attract consumer deposits and other funding sources.

These deposits in turn are loaned to other consumers and businesses sustaining economic growth. Economic and loan growth are driven, then, by the availability of equity capital in the banking system. It is disconcerting that at the very time our Texas economy is beginning to grow, the amount of bank equity capital in Texas has fallen to a very low level.

As the pace of economic activity increases, future growth in our economy could be restrained if the level of equity capital in our banking system is not sufficient to attract the consumer deposits necessary to fund loan growth.

Because of our strong capital base, our bank has been able to attract a significant amount of new deposits. In the five quarters ended March 31, 1990, our deposits increased by over $5 billion, representing growth of almost 25 percent. During the same period, active pursuit of lending opportunities brought us new loans totalling $2.75 billion. We have made new commercial, real estate and energy loans of $1.8 billion, as well as $617 million in new consumer loans. That translates to a growth rate of 21 percent during that period.

Details concerning our lending efforts have also been submitted to the committee as supplement B.

The growth in the Texas economy, as well as our national economy, is dependent upon the availability of capital through bank loans. But, Mr. Chairman, there is a movement currently underway among national bank examiners to price commercial bank loan portfolios to current market values.

This effort, carried to extreme, will further erode bank equity capital throughout our country.

The current evaluation process is proceeding at such an aggressive pace that it prevents a logical and constructive restructuring of questionable loans. The pace of this process does not provide borrowers with an opportunity to work out such loans. It encourages lenders to liquidate questionable loans more quickly to prevent further criticism by the national bank examiners.

We need to balance the intensity of this examination process with an appropriate degree of prudence and sound business judgment in order to avoid the self-fulfilling prophecy of downward-spiraling financial values throughout our entire country.

It is also significant that, since the early 1980's, funds have flowed freely into the banking system with full protection afforded by the FDIC. Many of these deposits funded projects in which insufficient amounts of owner equity were invested in the projects.

Had many of these projects in the past decade received an adequate level of owner equity on the front end, in addition to bank financing, project failures would have been far less than actually experienced as market values eroded.

In many instances, lending practices were excessive and owner equity was lacking. Funding, however, was available due to the protection depositories received from Government insurance funds.

Our present system needs to be reviewed. I encourage you to emphasize protection for the individual depositor, the importance of owner equity in all lending transactions, and the necessity for an adequate level of equity capital in the banking system.

The banking associations have offered initial suggestions on reform, and they are worthy of consideration. I do not have the answer on reform, but I recognize the need for greater discipline by borrowers and depository institutions.

The CHAIRMAN. Let me just interrupt you, and I apologize for doing so because I've been conducting hearings for 24 years. I've seen them come in all sizes and shapes.

We went longer this morning than we intended to and we're pressed up against some very tough time constraints.

What I'm going to ask you to do, if you can, is to try to finish in about 1 minute or so, and then I want to leave some time for Ms. Gonzalez, and otherwise, we're going to just kind of get squeezed out of time here.

So, if I can do that, we're going to make your full statement a part of the record, and we've had a chance to review it.

Mr. HARTMAN. All right. Yes. If I could, then, just move to page 16 and page 17.

The CHAIRMAN. Very good.

Mr. HARTMAN. In summary, the first priority should be placed on minimizing the escalating cost of the thrift crisis. At the outset, it is essential that the RTC encourage qualified asset managers and loan workout specialists to bid on distressed assets.

The RTC should ensure that each bid list contains a reasonable number of qualified bidders.

Because of the tremendous volume of distressed assets, it is vital that the RTC streamline the process to providing oversight to third-party contractors. The oversight process being utilized by the FDIC on the contract to collect the First Republic assets is a proven model. The key is for the RTC to avoid micro-management by delegating reasonable authority to responsible contractors.

Despite the fact that banks are willing to provide financing according to their individual underwriting criteria, the sheer volume of assets to be sold and restructured makes it essential that RTC provide financing, particularly for nonincome-producing real estate.

The RTC should develop reasonable financing guidelines to facilitate the workout and disposition of thrift assets.

Finally, the RTC is encouraged to continue to develop its recently announced bulk sales program. Bulk sales will reduce the volume of assets under RTC management, raise cash for the agency, and reduce the administrative expense burden.

Let me close, Mr. Chairman, by stating that depository institutions will lend money since it's their highest yielding earning asset, commensurate with the current review practices of their respective regulatory authorities in the availability of funding from depositors.

New loan activity, however, will be reflective of changes underway in our financial system. Regulatory authorities, rightfully concerned over the thrift losses, have already tightened regulatory enforcement.

In addition, the continuation of current deposit insurance practices and the current level of bank capital are both under scrutiny. Reform in our financial institution system is anticipated and the speed with which Congress acts will be very determinative.

In short, the deposit raising and lending environment must become more certain for depository institutions to become more aggressive loan-makers.

Thank you for this opportunity to speak with you this morning.

[The complete prepared statement of Timothy P. Hartman follows:]

The CHAIRMAN. Very good. Thank you very much.

Senate Committee on Banking, Housing and Urban Affairs

STATEMENT OF

Timothy P. Hartman
Chairman, NCNB Texas National Bank

Washington, D.C.
September 13, 1990

Good morning, Mr. Chairman and Members of the Committee. My name is Tim Hartman. I am Chairman of NCNB Texas National Bank.

I appreciate the invitation to testify and share our private sector experience in the area of asset disposition relating to failed financial institutions.

Because of the nature of the transaction that brought NCNB to Texas, the bulk of our workout experience has been with the Federal Deposit Insurance Corporation rather than the Resolution Trust Corporation. Our belief, based on the past two years' operations, is that the policies and procedures we have developed in concert with the FDIC have served both the public and the federal government well.

Our collecting bank, Financial Resource Management, Inc., is a separate, wholly owned subsidiary which manages and collects troubled loans of the former First Republic banks for the FDIC. Formal policies and procedures for the collecting bank were developed in conjunction with the FDIC and are available to the Committee for review.

In Supplement A, we have filed with the Committee the portions of those policies and procedures which were previously supplied less than two months ago to the House Committee on Banking, Finance and Urban Affairs in its field hearings in Austin, Texas.

In response to your question regarding loan workouts, let me say that first consideration is always given to pursuit of a troubled loan's full debt repayment if we can determine that the borrower has the financial means to repay. Obviously, the Texas economic downturn of the past several years -- from which we are now beginning to rebound -- has seriously reduced the financial capabilities of the majority of borrowers. In the cases where reduced financial means can be substantiated, restructuring becomes the next consideration.

Our experience convinces us that restructuring with the original borrower provides the best route to resolution of troubled loans where ability to repay according to original terms no longer exists. We offer the following example of a hypothetical loan with very typical aspects in order to exemplify the general approach of our collecting bank.

The original borrower is a company operating in a weakened economy. Debt repayment on stated terms is impossible. The debt is guaranteed by the company's owner.

The borrower is delinquent on its $10 million bank debt. While it continues to operate, it is unprofitable and cash flow will not cover debt service. Restatement of its assets at a realizable value reflects a negative net worth. Analysis of the company operation indicates that on a restructured basis, including disposition of excess assets, the company can survive, but only if supporting portion of the existing debt balance.

The weakened economy has also had its effects on the company's owner, reducing his financial net worth to a negative figure, excluding assets exempt from bankruptcy. In spite of this, however, the owner has sheltered a significant cash position which may not be accessible to the collecting bank without the owner's cooperation.

Analysis clearly reflects that a cooperative restructure will maximize recovery potential, as well as keep open the doors of a useful employer. Collateral on a realizable value basis is insufficient to satisfy debt if foreclosed. The collecting bank has a questionable ability to work through the court system to access the owner's sheltered cash in bankruptcy.

An out-of-court restructure appears to be the best solution for all parties. The restructure may include any of the following elements:

- partial debt restructure;
- cash paydown from liquidation of excess assets and cash investment from the owner's sheltered funds;
- a deficiency note which may be released if the restructure debt is paid as agreed, or the bank may receive some form of profits, interest, warrants, or the like, to provide potential ability to recover the deficiency should the company achieve greater success than anticipated;
- other creditors' claims might be settled with partial cash payment or a combination of cash and deficiency notes structured similarly to the bank's claim.

There are no set rules as to how a particular troubled loan is restructured as all loans are unique. Many restructures are similar, yet all are different. Restructuring is complex and requires detailed background work in each instance prior to negotiations with the borrower. This work includes legal analysis of existing documentation, analysis of cash flows and asset values, reappraisal of the property, assessment of potential environmental risks and other significant considerations.

Negotiations frequently conclude with a payoff or planned payout less than the full amount due. To insure that full consideration has been given to the borrower's total capacity, the borrower is requested to provide current financial statements and a comprehensive affidavit of financial condition. We then perform an asset search to validate the data provided.

The transaction ends with the execution of documents, including agreement to reinstate the full debt should the financial data provided subsequently prove to be false. Future financial statements and income tax returns are usually required to monitor the information provided by the borrower.

FRMI began collecting these troubled loans in late 1988. In the 20 months ended July 31, 1990, collections totaled $3.7 billion, which represents 59% of the original estimated recoverable amount. Our 1990 plan is to collect more than 40% of the year's beginning book balance of approximately $4.5 billion. Whenever possible, we have avoided the use of an adversarial foreclosure process in the resolution of troubled loans.

The strict collection policy requirements of the FDIC notwithstanding, the FRMI loan workout strategy has achieved outstanding collection results, while keeping contested foreclosures to approximately 4% of the beginning available asset pool. Collections through restructure or payments from FRMI borrowers have accounted for approximately 90% of our $3.7 billion in cash collections. Less than 10% of collections came from the disposition of other owned assets.

The servicing agreement with the FDIC requires an oversight mechanism that facilitates private-sector initiative in the workout process. We believe that this oversight process should be a model for RTC collecting procedures as well. The model is very simple. FRMI personnel manage, and the FDIC oversees their actions, much as a board of directors would in a corporate environment.

It is worth repeating that to date the majority of the collections have been accomplished by restructuring loans with original borrowers based on those borrowers' ability to repay. Our experience has proven this process to be much less expensive than the adversarial foreclosure alternative. This is because foreclosure necessarily involves property deterioration, the effort to resell the project, the time consumed to complete the transaction, and the distinct possibility of extended litigation.

With reference to your question concerning Texas lending, the state's economic recovery has begun.

Banking's role in a growing economy such as we have in Texas is to provide a strong capital base that will instill public confidence and attract consumer deposits and other funding sources. These deposits, in turn, are loaned to other consumers and businesses, sustaining economic growth.

Economic and loan growth are driven, then, by the availability of equity capital in the banking system. It is disconcerting that at the very time our Texas economy is beginning to grow, the amount of bank equity capital in Texas has fallen to a low level.

As the pace of economic activity increases, future growth in our economy could be restrained if the level of equity capital in our banking system is not sufficient to attract the consumer deposits necessary to fund loan growth.

Because of our strong capital base, our bank has been able to attract a significant amount of new deposits. In the five full quarters ended March 31, 1990, our deposits increased by over $5 billion, representing growth of almost 25%. During this same period, active pursuit of lending opportunities brought us new loans totaling nearly $2.75 billion. We have made new commercial, real estate and energy loans of $1.8 billion, as well as $617 million in new consumer loans. That translates to a growth rate of 21% during the same time period.

Details concerning our bank's lending efforts and lending requirements are contained in Supplement B.

The growth of the Texas economy, as well as our national economy, is dependent upon the availability of capital through bank loans. We at NCNB Texas are committed to be present in the market place to make that capital available for future economic growth.

But, Mr. Chairman, there is a movement currently under way among national bank examiners to price commercial bank loan portfolios to current market values. This effort, carried to extreme, will further erode bank equity capital throughout our country.

The current evaluation process is proceeding at such an aggressive pace that it prevents a logical and constructive restructuring of questionable loans. The pace of this process does not provide borrowers with an opportunity to work out such loans. It encourages lenders to liquidate questionable loans more quickly to prevent further criticism by the national bank examiners. We need to balance the intensity of this examination process with an appropriate degree of prudence and sound business judgment in order to avoid the self-fulfilling prophecy of downward-spiraling financial values throughout the entire country.

It is also significant that, since the early 1980s, funds have flowed freely into the banking system with the full protection afforded by the FDIC (government deposit funds). Many of these deposits funded projects (loans to borrowers) in which insufficient amounts of owner equity were invested in the projects. Had many of these projects in the past decade received an adequate level of owner equity on the front end in addition to bank financing, project failures would have been far less than actually experienced as market values eroded.

In many instances, lending practices were excessive, and owner equity was lacking. Funding, however, was available due to the protection depositories receive from government insurance funds.

Our present system needs to be reviewed. I encourage you to emphasize protection for the individual depositor, the importance of owner equity in all lending transactions and the necessity for an adequate level of equity capital in the banking system. The banking associations have offered initial suggestions on reform, and they are worthy of consideration. I do not have the answer on reform, but I recognize the need for greater discipline by borrowers and depository institutions.

Of further concern is the potential for the RTC to move troubled loans from the portfolios of failed thrifts into healthy financial institutions. Troubled portfolios transferred from the failed thrift category to a marginally healthy banking category can only serve to weaken the banking system.

Recapitalized and healthy financial institutions have the ability and a strong willingness to play a major role in financing economic growth. Existing liquidity is a strong incentive to seek new loans in order to enhance earnings. The number of buyers or potential borrowers, however, who are willing or able to invest a sufficient level of owner equity into a purchase of RTC assets is limited.

At the same time, well-capitalized financial institutions want to provide financing for sales by the RTC or other entities of assets held, or formerly held, by troubled financial institutions. Because of uncertainties in the market for real estate properties, however, lenders must require a substantial owner-equity investment and additional credit support by the buyer in order to make creditworthy loans.

Undoubtedly, this is frustrating for potential buyers of repossessed assets who expect local institutions to lend based upon a relatively high-percentage advance of the appraised value of the real estate being purchased. The uncertainties of the real estate market value make this impractical today.

In order for lenders to accommodate the needs of troubled-asset buyers for financing in any meaningful way, the RTC will need to stabilize the values and depth of market for real estate in troubled areas, or it will need to provide credit support to the transactions.

It is our understanding that the RTC is investigating a seller-financing program utilizing private-sector lenders to originate and service loans under RTC lending guidelines, policies and procedures. The lender would earn an origination fee and an appropriate interest spread, with the RTC bearing the majority of the credit risk of the buyer. Given the real estate market uncertainty, this program has merit. We strongly encourage the RTC to continue the development and implementation, through the private sector, of this seller-financing program.

The overall goals of the RTC regarding asset disposition are to achieve the expeditious sale of the portfolio of assets at the highest net present value in a manner that minimizes detrimental effects of such sales on local stock of low- and moderate-income properties.

However well-intentioned this may be, we are concerned about the impact of the RTC's pricing and disposition policies on real estate values in general and on the economic well-being of the financial institutions and individuals who have a financial interest in real estate. In actual practice, these policies may result in the continued discounting of properties from current appraised values in a manner that exacerbates the downward spiral of property values.

Our experience to date indicates that the RTC portfolio of troubled assets includes far more loans to borrowers than there are individual assets ready for resale. We again suggest the development of a program which encourages the restructuring of loans with original borrowers versus a program which assumes a process of foreclosure as the most effective remedy.

Regardless of the resolution of the RTC troubled asset portfolio, it is important that adequate levels of owner equity be required in the financing of these properties to avoid a recurrence of the problem. The resolution of this troubled asset portfolio will be difficult due to the size of the portfolio and the uncertain timing of dispositions.

We believe one solution is to encourage the RTC to develop programs to transfer the troubled assets to the private sector in large pools. Any private-sector involvement should require the investment of a significant amount of liquid equity capital which should be at risk in the transaction.

Our recommendation is to transfer the assets to intermediate owners in a pool purchase program. These owners would have the option to dispose of these assets over a period of years, allowing the private sector to work the assets in order to return the maximum amount to the RTC, to provide a reasonable equity return to the private sector investors and, then, for both parties to share in an upside recovery of values.

Within this transfer process, we also strongly recommend permitting the RTC to engage in negotiated bulk sales of multi-family apartment properties. Such a program should be aligned with the affordable housing provisions of FIRREA. Our subsidiary, NCNB Community Development Corporation, and its joint venture partner, the National Corporation for Housing Partnerships, have been negotiating with the RTC to make the first bulk purchase of multi-family apartment properties under these FIRREA provisions.

In Supplement C, we have offered additional comments regarding the RTC, including observations made by several of our senior FRMI managers.

In summary, first priority should be placed on minimizing the escalating cost of the thrift crisis. At the outset, it is essential that the RTC encourage qualified asset managers and loan workout specialists to bid on the distressed assets. The RTC should ensure that each bid list contains a reasonable number of qualified bidders.

Because of the tremendous volume of distressed assets, it is vital that the RTC streamline the process of providing oversight to third-party contractors. The oversight process being utilized by the FDIC on the contract to collect the First Republic assets is a proven model. The key is for the RTC to avoid micro-management by delegating reasonable authority to responsible contractors.

Despite the fact that banks are willing to provide financing according to their individual underwriting criteria, the sheer volume of assets to be sold and restructured makes it essential that the RTC provide financing, particularly for non-income-producing real estate. The RTC should develop reasonable financing guidelines to facilitate the workout and disposition of thrift assets.

Finally, the RTC is encouraged to continue to develop its recently announced bulk sales program. Bulk sales will reduce the volume of assets under RTC management, raise cash for the agency and reduce the administrative expense burden.

Let me close, Mr. Chairman, by stating that depository institutions will lend money (since it is the highest-yielding earning asset) commensurate with the current review practices of their respective regulatory authorities and the availability of funding from depositors.

New loan activity will be reflective of changes underway in our financial system. Regulatory authorities, rightfully concerned over the thrift losses, have already tightened regulatory enforcement. In addition, the continuation of current deposit insurance practices and the current level of bank capital are both under security. Reform in our financial institutions system is anticipated, and the speed with which the Congress acts will be very determinative.

In short, the deposit-raising and lending environment must become more certain for depository institutions to become more aggressive loan makers.

Thank you for this opportunity to testify. I would be pleased to answer questions or respond to comments.

Senate Committee on Banking, Housing and Urban Affairs

Supplement 'A' to Statement of
Timothy P. Hartman
Chairman, NCNB Texas National Bank

Washington, D.C.
September 13, 1990

POLICIES AND PROCEDURES OF FINANCIAL RESOURCE MANAGEMENT, INC.

The formal policies governing the structure and operation of Financial Resource Management, Inc. were prepared according to the instructions of the FDIC. The completed policies comprise a credit policy manual and 11 detailed procedures manuals.

The guidelines imposed by the FDIC for creation of the policies are set out in the Service Agreement between NCNB Texas National Bank and the FDIC as follows:

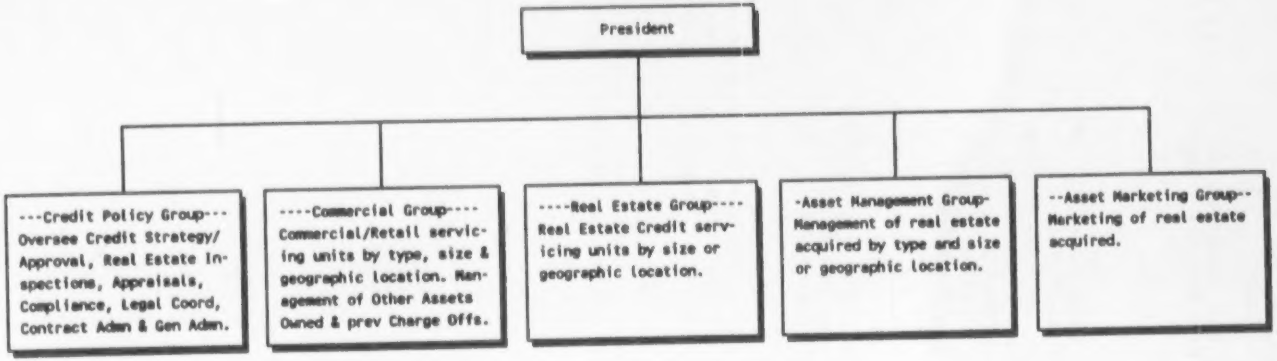
> 2.4 Operations Manual.
>
> (a) As soon as practicable after the date hereof but not later than December 31, 1988, the Bank will prepare a manual of operations (the "Operations Manual"), setting forth in form and substance satisfactory to the Oversight Committee the policies, procedures and rules governing the organization, operations, credit risk evaluation, litigation, reports (including reports required from time to time by the Corporation) and accounting systems of the Pool (and including the policies, procedures and rules relating to compliance by management and staff of the pool with the provisions of the Operations Manual). The Operations Manual shall also include provisions to insure compliance by Pool Management and staff with such standards of conduct relating to conflicts of interest as may be required by the Oversight Committee.
>
> (b) During the thirty-day period following the submission of the operations manual to the Oversight Committee pursuant to paragraph (a) of this Section 2.4, the Oversight Committee shall be entitled to request such revisions to the proposed Operations Manual as shall in its discretion be necessary to conform the Operations Manual to the requirements of this Agreement, and the Bank shall revise the Operations Manual to the Oversight Committee's satisfaction. Thereafter, the Bank shall revise the Operations Manual as may be necessary from time to time, or as may be requested by the Oversight committee, to insure the continued effective operation of the Pool.
>
> (c) If the Bank shall fail to prepare and submit the Operations Manual in accordance with this Section 2.4, or if the Bank shall fail to make the revisions requested by the Oversight Committee, the Corporation shall be entitled to prepare the Operations Manual in accordance with the requirements of this Section 2.4 and the Operations Manual

> prepared by the Corporation shall be adopted as the Operations Manual with respect to the Pool for all purposes thereof.

The structure of FRMI was formulated based on the charter in the Credit Policy Manual specifying effective management and collection of the distressed asset pool. To date the structure adopted by FRMI and approved by the FDIC has worked exceptionally well. FRMI has collected over $3.7 billion in cash through July 31, 1990, from an available asset pool of $7.4 billion. The strict collection policy requirements of the FDIC notwithstanding, FRMI has adopted a loan workout strategy that emphasizes working with FRMI customers cooperatively as opposed to collection by litigation or foreclosure. This approach has enabled FRMI to achieve outstanding collection results while keeping contested foreclosures to approximately 4% of the beginning available asset pool. Collections through restructure or payments from FRMI customers have accounted for approximately 90% of our $3.6 billion in cash collections. Less than 10% of collections came from the disposition of Other Owned Assets. To present a complete view of the operational structure to FRMI, we have attached a functional organization chart.

Applicable pages of Sections II and X of the FRMI Credit Policy Manual are attached. These pages cover applicable FRMI policy for loan work outs, foreclosures and liquidations.

FINANCIAL RESOURCE MANAGEMENT, INC.
FUNCTIONAL ORGANIZATION CHART
JULY 11, 1990



President

---Credit Policy Group---
Oversee Credit Strategy/Approval, Real Estate Inspections, Appraisals, Compliance, Legal Coord, Contract Adm & Gen Adm.

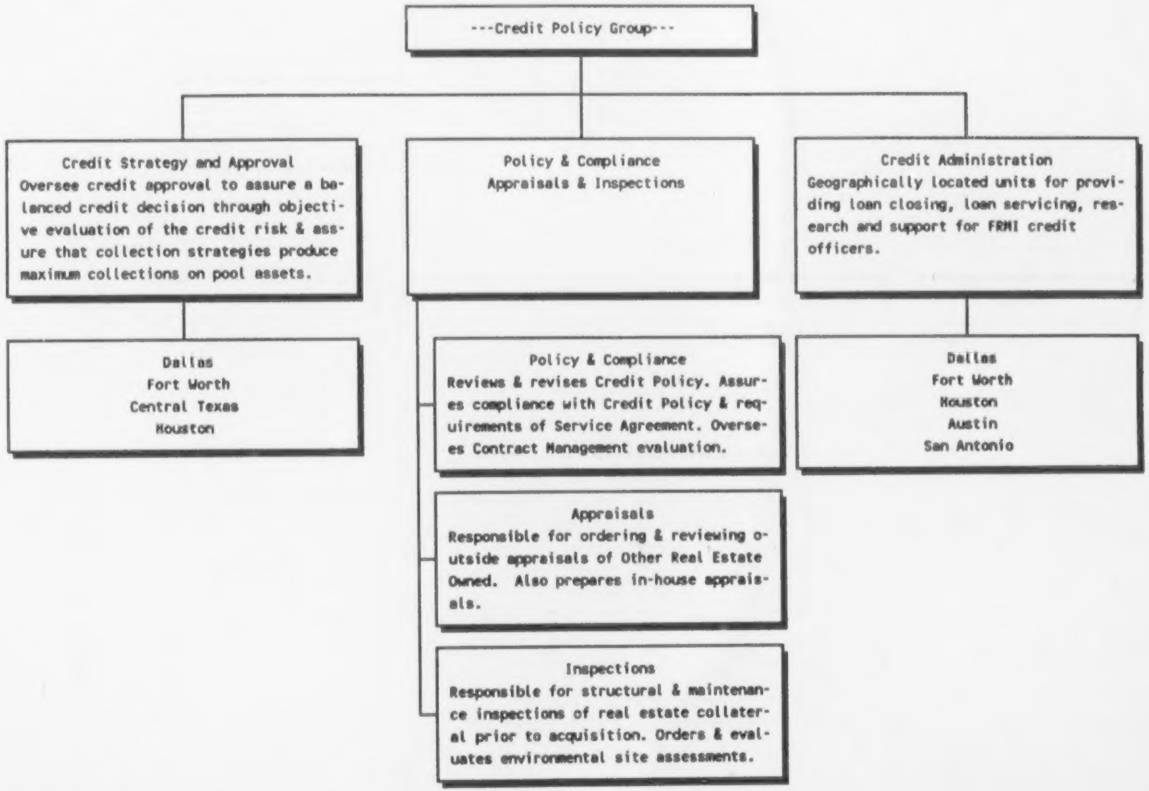
----Commercial Group----
Commercial/Retail servicing units by type, size & geographic location. Management of Other Assets Owned & prev Charge Offs.

----Real Estate Group----
Real Estate Credit servicing units by size or geographic location.

-Asset Management Group-
Management of real estate acquired by type and size or geographic location.

--Asset Marketing Group--
Marketing of real estate acquired.

FINANCIAL RESOURCE MANAGEMENT, INC.
FUNCTIONAL ORGANIZATION CHART
JULY 11, 1990



---Credit Policy Group---

Credit Strategy and Approval
Oversee credit approval to assure a balanced credit decision through objective evaluation of the credit risk & assure that collection strategies produce maximum collections on pool assets.

Dallas
Fort Worth
Central Texas
Houston

Policy & Compliance
Appraisals & Inspections

Policy & Compliance
Reviews & revises Credit Policy. Assures compliance with Credit Policy & requirements of Service Agreement. Oversees Contract Management evaluation.

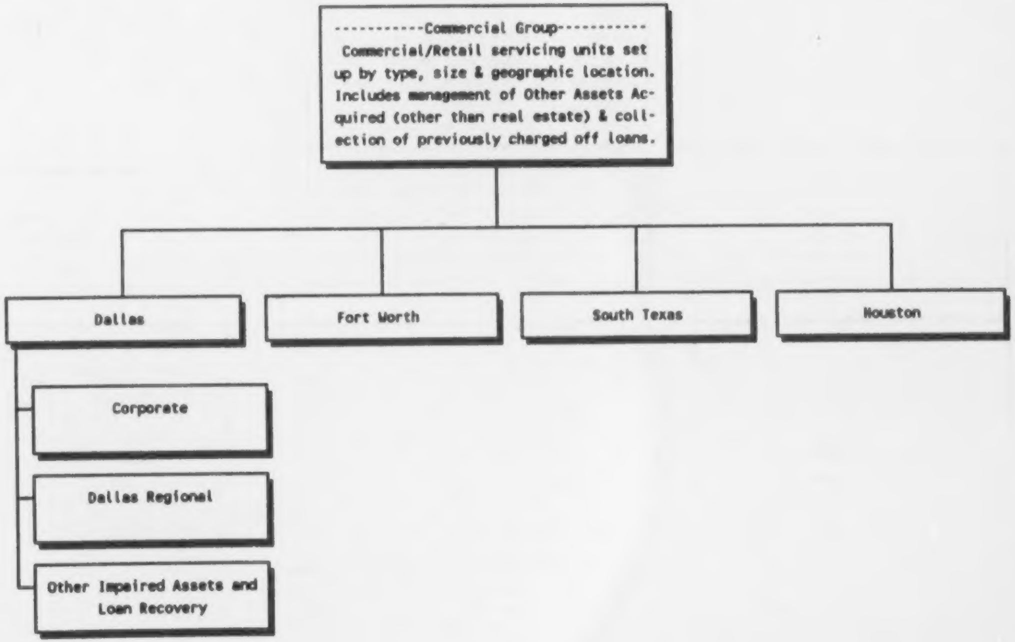
Appraisals
Responsible for ordering & reviewing outside appraisals of Other Real Estate Owned. Also prepares in-house appraisals.

Inspections
Responsible for structural & maintenance inspections of real estate collateral prior to acquisition. Orders & evaluates environmental site assessments.

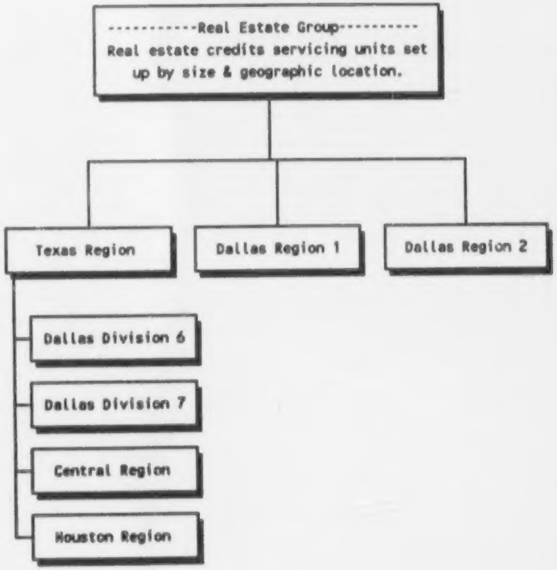
Credit Administration
Geographically located units for providing loan closing, loan servicing, research and support for FRMI credit officers.

Dallas
Fort Worth
Houston
Austin
San Antonio

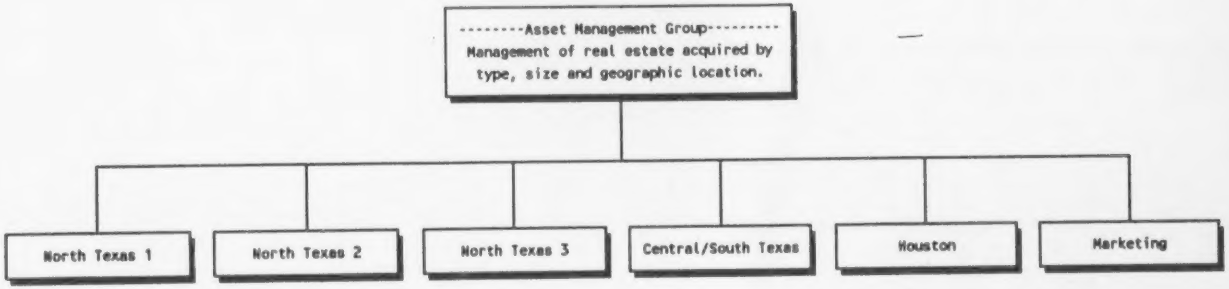
FINANCIAL RESOURCE MANAGEMENT, INC.
FUNCTIONAL ORGANIZATION CHART
JULY 11, 1990


-----------Commercial Group-----------
Commercial/Retail servicing units set up by type, size & geographic location. Includes management of Other Assets Acquired (other than real estate) & collection of previously charged off loans.
Dallas
Fort Worth
South Texas
Houston
Corporate
Dallas Regional
Other Impaired Assets and Loan Recovery

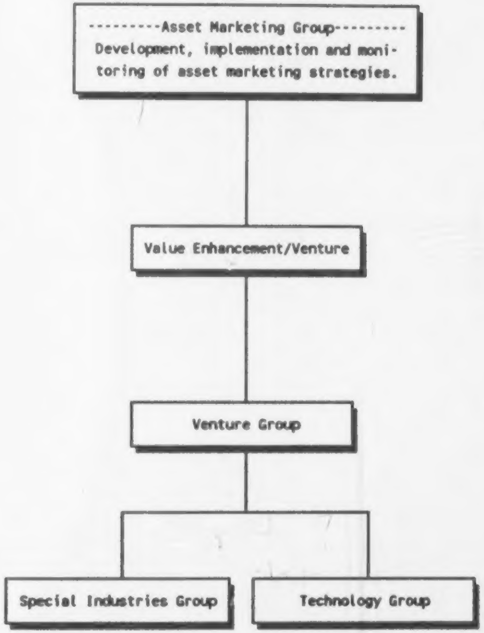
FINANCIAL RESOURCE MANAGEMENT, INC.
FUNCTIONAL ORGANIZATION CHART
JULY 11, 1990


-----------Real Estate Group----------
Real estate credits servicing units set up by size & geographic location.
Texas Region
Dallas Region 1
Dallas Region 2
Dallas Division 6
Dallas Division 7
Central Region
Houston Region

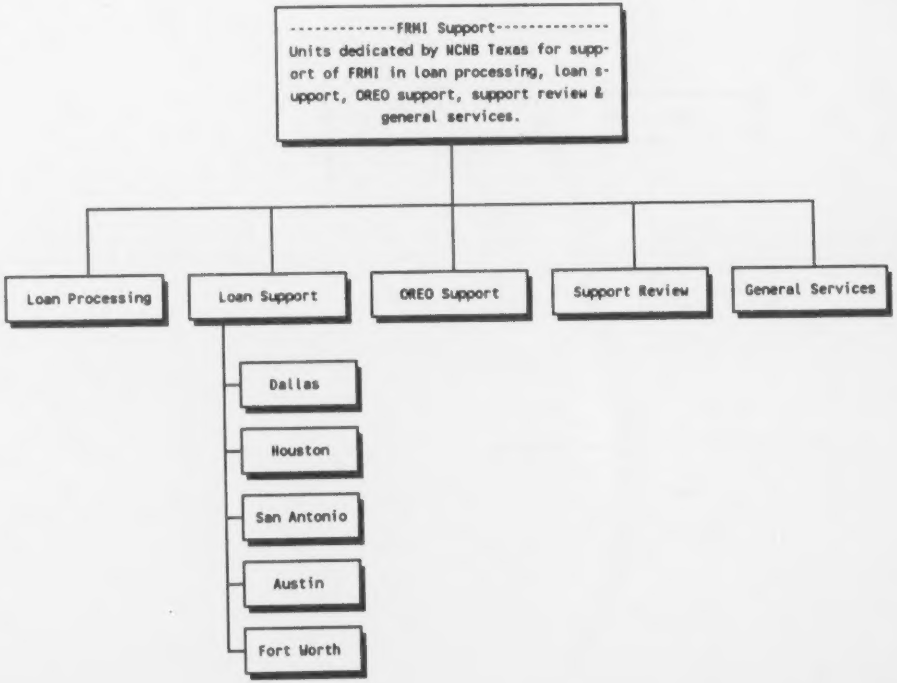
FINANCIAL RESOURCE MANAGEMENT, INC.
FUNCTIONAL ORGANIZATION CHART
JULY 11, 1990


--------Asset Management Group--------
Management of real estate acquired by
type, size and geographic location.
North Texas 1
North Texas 2
North Texas 3
Central/South Texas
Houston
Marketing

FINANCIAL RESOURCE MANAGEMENT, INC.
FUNCTIONAL ORGANIZATION CHART
JULY 11, 1990


---------Asset Marketing Group---------
Development, implementation and monitoring of asset marketing strategies.
Value Enhancement/Venture
Venture Group
Special Industries Group
Technology Group

FINANCIAL RESOURCE MANAGEMENT, INC.
FUNCTIONAL ORGANIZATION CHART
JULY 11, 1990


-------------FRMI Support-------------
Units dedicated by NCNB Texas for support of FRMI in loan processing, loan support, OREO support, support review & general services.
Loan Processing
Loan Support
OREO Support
Support Review
General Services
Dallas
Houston
San Antonio
Austin
Fort Worth

04-02.001 CHARTER OF SPECIAL ASSET BANK

The charter of the Special Asset Bank has been set forth as described in the following section.

1 Objectives

The Bank is to maximize the discounted present value of the net collections and sales proceeds with respect to the assets in the Pool, taking into account the following factors:

a The cost of funding the assets in the Pool; and

b Risk adjusted opportunity interest expense and administrative and legal expense associated with the management of an asset in the Pool;

The Bank must consistently and consciously reinforce a loan conservation philosophy (rather than a relationship development philosophy) with respect to all accounts. This approach must be reflected in every action, consistent with the objective of maximization of the discounted present value of the expected net realization on each asset.

However, the agreement with the FDIC specifically does not require quick sales or other techniques for managing Pool Assets, as the large size of the Pool requires the Bank to consider the effects on the value of assets retained of plans of action with respect to assets to be sold. The Bank shall select the workout approach in each instance which in its judgement will maximize the value of the entire Pool, subject to the approval of the Oversight Committee.

2 Pool Management Objectives

To the extent not inconsistent with the objectives stated above, the Pool is to be managed in such a manner as to:

a Reduce the outstanding legal balance, as soon as practical, for each debtor or group of debtors associated with a relationship or project based upon an orderly liquidation approach; and

b Allow the Other Real Estate Owned (OREO) assets to be sold for their current, or close to approximate, appraised value (generally not less than 90%) as properties are acquired; and

c Avoid speculation over potential increases in the value of Other Real Estate Owned and Other Impaired Assets.

New lending by the Special Assets Bank is to be severely limited to those situations where the new lending is, generally, properly secured. New lending is further limited by the principles set forth in the "Permitted Amendment" definition (see page III-3). The FDIC advocates a firm reduction program for the aggregate balance due from each debtor; therefore, any new lending should enhance repayment of all, or most of, the combined balance due from the debtor within, generally, a maximum of three years.

3 Liquidation Approach

To the extent not inconsistent with the objectives stated above, an orderly liquidation approach is, generally, defined as:

a Requiring customers in default to repay their debt in full by obtaining refinancing through either NCNB Texas National Bank or other financial institutions; whenever such customers are in a financial condition to do so; and

b Requiring customers in default to reduce the aggregate balance of their indebtedness whenever they have the financial capacity to do so; and c Avoiding the capitalization of interest into restructured or renewed debt whenever the customers have the financial capacity to pay interest and/or principal; and

d Proceeding to liquidate available collateral when customers refuse to either cooperate with the bank in making payments and they possess the financial capacity to do so or whenever customers, including all types of obligors, refuse to provide financial statements to the bank; and

e Proceeding to liquidate collateral in a timely manner whenever the customers are in serious default.

This approach is offered as a general guideline and credit recommendations should be based upon sound business analysis for each situation.

2 Scope of Responsibilities

To achieve the stated objectives, decisions about Pool Assets must be made independently and objectively, subject to applicable laws and contractual obligations, without regard to the interests of NCNB Texas, NCNB Corporation, their respective subsidiaries, or the FDIC, with respect to other relationships with the same obligor. Therefore, the Special Asset Bank is responsible for:

a Management of the Special Asset Pool, and

b Management of the total customer relationship of those customers assigned to the Pool.

Each officer is to exercise critical judgment in the administration of pool assets.

3 Business Requirements

To fulfill the requirements of the Service Agreement, NCNB Texas has established the Special Asset Bank as a separate functional unit for the purpose of managing the assets in the Pool. The Special Asset Bank includes dedicated line management, accounting, and loan support personnel devoting 100% of its time to the administration of the Pool who will:

a Provide work out, asset management and sales, and loan recovery functions with respect to the following asset types:

  1) Commercial loans

  2) Real estate loans

  3) International debt

  4) Other Real Estate (ORE)

  5) Other Impaired Assets (OIA)

  6) Equity positions

  7) Contingent assets

b Maintain financial controls;

c Provide timely management reporting;

d Establish the ability to function as a separate legal entity within three years; and

e Maintain an arms length relationship with NCNB Texas and the FDIC.

4 Functions

The following operating functions must be provided for the Special Asset Bank:

- Workout
- Recovery
- Other Asset Management
- Property Management
- Credit Policy
- Credit Strategy and Approval
- Credit Administration
- Credit Reporting & Forecasting
- Appraisal Services
- Relationship Management
- Legal
- Financial Management
- Management Reporting
- Funding
- Data Processing
- Loan Services
- General Services
- Audit
- Personnel
- Repackaging
- Value Enhancement

The operating functions will be provided by the Special Asset Bank staff or through contract services.

5 Functional Operations

The Special Asset Bank is organized as follows:

a Credit servicing units by type of asset and/or geographic location, including management of foreclosed assets (other than real estate) and ongoing collection activities relating to previously charged off loans assigned to the Bank.

b Asset Management and Marketing of Other Real Estate (ORE)

c Credit Policy

1) Credit Strategy and Approval

2) Credit Reporting and Forecasting

3) Credit Administration

a) Appraisal Services

b) Compliance

c) Legal Coordination

d) FDIC Contract Administration & Special Projects

e) General Administration which serves to support and provide research for credit officers as well as serving as intermediary between the credit officer and Loan Processing and Loan Servicing for all functions except loan and collateral document preparation.

The operating units may be geographically disbursed to carry out activities in a cost effective manner.

6 Operating Support

a Accounting Principles and Reporting Requirements
A distinct general ledger system has been created apart from NCNB Texas, and according to the requirements of the FDIC. Accounting services for the Bank will be provided by the Special Asset Bank Control Unit of the NCNB Texas Treasury Division. The Bank's Credit Administration unit is responsible for coordination with the NCNB Texas' Special Asset Bank Control Unit.

b Loan Support and Procedures
All transaction records for Bank assets are segregated from NCNB Texas records. SAB Support is organized as follows: (i) Loan Processing whose principal function is maintenence of the loan systems and reconciling such, (ii) Loan Servicing whose principal functions are credit and collateral file maintenance and (iii) Other Support whose principal functions involve special projects.

04-02.002 ORGANIZATION AND RESPONSIBILITY

1 FDIC Oversight Committee

In accordance with the Service Agreement, an Oversight Committee of three persons has been established, having the right to inspect and audit the records maintained by the Bank on those assets assigned to the Pool, to require such reports as they deem necessary or advisable, and to engage such outside consultants, including accountants, as they reasonably deem necessary or advisable to oversee, monitor or audit the performance of the Bank. Additionally, the Oversight Committee has the responsibility to review and approve the following:

a All credit decisions, charge-offs, settlements, compromises and restructurings made by the Bank with respect to Pool Loans and Commitments involving amounts in excess of $25 million as further defined in Limits of Credit Authority (Chapver IV); and

b Salary, bonus and incentive plans for management and staff of the Bank; and

c All third party contracts, agreements and other arrangements for services not competitively bid, which involve amounts chargeable to the Pool in excess of $10,000.

NOTE: Some non-discretionary expenses have been exempted from this requirement. Those items include: advertising, appraisal fees, court fees, documentary fees, filing fees, insurance premiums associated with forced placed multi-peril (competitive bidding is required), lease operating expenses, recording fees, search fees, taxes and utilities.

2 Special Assets Bank Committee

In order to properly discharge its obligations and responsibilities to manage the Special Asset Bank under the Assistance Agreement, NCNB Texas has formed a Special Asset Bank Committee comprised of the President of the Bank as Chairman, the Senior Credit Policy Officer and such other members designated from time to time by the NCNB Texas Chief Executive Officer. This Committee shall meet the second & fourth Wednesday of each month or on call of the Chairman and take the following actions:

a Review and approve policies for the management of the Special Asset Bank and monitor performance against these policies;

b Review economic factors and forecasts affecting the values of assets in the Special Asset Bank;

c Approve overall asset collection and disposition strategies;

d Review and approve annually the authorities of officers of the Special Asset Bank to approve credit restructurings, new loan commitments, asset sales, non-interest expenditures & debt forgiveness.

e Review large debt restructurings and asset sales, and overall collection trends;

f Review and approve the annual business plan and operating budget of the Special Asset Bank and monitor performance relative to plan; and

The Special Asset Bank Committee has delegated the responsibility for the credit operations of the Bank to the Bank's President and the Credit Strategy and Policy Committee.

3 Credit Policy Function

a Credit Policy Responsibilities
NCNB Texas Special Asset Bank Credit Policy (Credit Policy) will maintain a credit management process through various strategies, policies and procedures that will achieve Pool management objectives in the most effective manner possible. Specific responsibilities include:

1) Establishing strategies to maximize the discounted present value of the net collections and sales proceeds with respect to the assets in the Pool, factoring in funding costs and various other expenses.

2) Developing written credit policies and procedures for the Bank.

3) Establishing loan processes and authorities.

4) Managing a Credit Reporting & Forecasting function.

5) Monitoring of compliance with regulatory requirements and the Bank's policies and procedures.

6) Monitoring credit and collateral exceptions and past due obligations.

7) Providing necessary appraisal management services.

8) Providing necessary liaison with the NCNB Texas Legal Division.

b Credit Policy Authority
To fulfill its responsibilities, Credit Policy is vested with designated authority on those matters involving credit quality and all credit related activities of the Special Asset Bank. Specifically, this authority includes:

1) Establishing credit policy and procedures as appropriate.

2) Approving/declining credit transactions up to the maximum limit established for Credit Policy.

3) Approving credit strategies, projections of cash flows and Statements of Best Interest on Pool Assets

4) Directing charge-offs, writedowns or reserves on all or portions of the Pool Assets.

5) Determining the accrual status of Pool Loans.

c Credit Strategy and Policy Committee
The Credit Strategy and Policy Committee, established to review overall lending policies, strategies and general performance of the Special Asset Pool, is composed of the Senior Credit Policy Officer as Chairman, the Senior Credit Strategy and Approval Officer as Vice Chairman, the Senior Credit Administration Officer as Secretary, the President of the Bank, and the heads of the Commercial and International, Texas Regional, Real Estate, and Asset Management Groups as members. The Committee will meet at least monthly and will review key issues regarding the Pool Assets, and such matters as it deems appropriate including the following:

1) Portfolio quality and trends,

2) Portfolio strategy,

3) Proposed policy, and

4) Pricing considerations.

4 Asset Review Process

a Asset Review Function
Credit Reporting & Forecasting will maintain a structure of Asset Review Committees to ensure the following general responsibilities are met in a timely manner:

1) Review Pool Assets,

2) Assess the fair market value of Pool Assets,

3) Review Cash Flow Projections, and

4) Approve actions and strategies recommended by those officers responsible for each Pool relationship.

b Asset Review Committee
The Committee, composed of the members of the Credit Strategy and Policy Committee plus representation from Credit Reporting & Forecasting shall meet as required for the specific purposes of:

1) Resolving any matters not finalized at any of its sub-committees' meetings;

2) Concluding other actions on Pool assets prior to the end of each month to reflect actions or events subsequent to the respective sub-committee's meeting, and

3) Such other purposes as the Committee may determine from time to time, including establishing general policies and procedures for the Asset Review Sub-Committees.

c Regional Asset Review committees
The Asset Review Committee will maintain a series of regional committees to properly fulfill the Asset Review responsibilities with each committee composed of at least one Asset Review Committee

member or Credit Strategy and Approval Officer as chairman, a representative of Credit Reporting & Forecasting as secretary, and members as designated by functional or geographic area as appropriate. Each Regional Asset Review Committee's meetings will be coordinated to ensure that the larger Pool assets are reviewed on a bi-annual (every six months) basis, and the following specific actions are taken regarding the Pool Assets under each committee's jurisdiction:

1) Review and approve the strategy to be followed in work out or liquidation of each Pool Asset.

2) Review and approve Cash Flow Projections required under the Assistance Agreement.

3) Review overdrafts of customer relationships assigned to the Bank when the overdraft is either:

   a) $100,000 or greater, or

   b) Over 30 days old.

4) Review exception reports as deemed necessary.

04-02.003 RELATIONSHIP MANAGEMENT

1 Organization

The Bank's credit relationship servicing activity will be performed only by designated credit officers who are assigned to one of the Banking Groups responsible for loans assigned to the Pool, which presently are:

a Commercial and International

b Texas Regional

c Real Estate

No Pool employee shall be assigned responsibility for any Pool Asset for which he or she was the originating loan officer or previously had a substantial relationship responsibility as an employee of a predecessor bank other than for workout purposes.

2 Credit Approval Authorities

All transactions regarding Pool Assets will be within the defined authority approval structure designated by Credit Policy, which has the responsibility to ensure that credit authorities are properly controlled. Maximum authority levels are in Section IV.

3 Credit Officer Responsibilities

After being assigned an asset, or group of related assets, gather and analyze all necessary information for the purpose of recommending a course of action. Organize and thoroughly review all files related to those assets.

Determine what individuals, entities or organizations are liable (and to what extent) for repayment of the indebtedness. If the obligors and/or guarantors have other debt with NCNB, information should be obtained regarding all related debt.

Determine exactly what collateral secures the debt. Thoroughly review all files and note any exceptions or shortcomings so they may be corrected if possible. During the initial review, note dates of insurance expirations, maturities, statute of limitations dates and other dates so that the tickler dates can be accumulated or updated. The credit officer is responsible for the accuracy of the tickler system with the assistance of Support, SAB.

It is the responsibility of the credit officer to understand the policies and procedures contained in this manual as they relate to the collection of assigned assets. The credit officer is to be knowledgeable about the provisions of the notes, the current appraised value of the collateral, and the procedure for acquiring the collateral in the event of default by the debtor; as well as projected expenses associated with such.

After files have been reviewed and any exceptions noted, take steps to correct these deficiencies. By correcting documentation exceptions, a weak asset can be turned into a potential sale or refinance candidate; however, the main advantage in correcting deficiencies is that you will be protecting the bank's position and improving the possibilities for higher recoveries in workouts and compromises.

If the loan is "on demand", has matured, or the term expires within one year, advise the borrower to seek alternative financing elsewhere and provide a firm time frame in which to inform the bank how negotiations are progressing.

It is the responsibility of the credit officer to document the results of all meetings or telephone conversations with obligors. The credit officer shall insure that all information, such as documentation of phone calls and other internally produced information, is included in the official files.

The credit officer is expected to have a detailed understanding of the following:

a The obligor's and guarantor's financial condition;

b The obligor's industry, in general and the obligor's business plans and competitive position in particular;

c The documentation of the loan and any appropriate legal issues;

d The collateral, its value and control;

e The position of other parties, including the motivation and goals of other creditors, equity holders, and other interested parties; and

f In the case of an owned asset, a detailed understanding of:

1) The owned asset, including all liabilities and potential liabilities associated with the asset,

2) The industry applicable to the asset,

3) Alternatives for holding and/or operating the owned asset in the most effective, cost efficient manner,

4) Alternatives for disposing of the asset, and

5) Any regulatory requirement associated with the owned asset.

Finally, the credit officer should evaluate the value of the asset based on cash flow projections, either from payments by the obligor(s) or liquidation of the collateral. As soon as the credit officer has attained a detailed understanding of the asset/account, he/she should estimate the present value recovery under various scenarios and recovery strategies, and cash flow projections should be prepared.

After evaluating various alternatives, the credit officer should develop the maximum present value recovery strategy by determining precisely what steps will be necessary for the proposed strategy to be successful. The recovery strategy may include, but not be limited to: payment according to original terms, compromise, restructure with additional collateral, foreclosure of the collateral, litigation against the obligors and guarantors, bankruptcy of the obligor and sale of the asset either individually or in groups to outside investors or financial institutions for fair market value.

Once the best strategy has been determined, the credit officer should negotiate with the obligor to insure that the obligor takes the actions necessary to enable us to realize the expected recovery. Firm deadlines should be established for each step in the recovery process.

If the obligor is uncooperative or fails to meet deadlines, the credit officer should analyze the asset to determine if litigation is a cost effective alternative and, if so, he/she should immediately refer the account to legal for collection and realization on the collateral.

The credit officer should seek advice from his/her manager in order to fully understand the appropriate means of collecting the assigned notes, when appropriate.

4 Duties and Responsibilities of Loan and Asset Management Managers

The Departmental and Regional/District Loan Managers and Asset Management Managers are required to monitor the efforts of the Credit and Asset Management Officers and to provide assistance and counseling when appropriate. Those specific duties and responsibilities include:

a Assure that credit officer performance is consistent with the policies of the Special Asset Bank;

b Review cash flow projections to determine that they are accurate in light of the collection or litigation strategy;

c Review collection goals and action goals that each credit officer has established, in general;

d Determine that strategies are developed to maximize collection of each asset or relationship/project;

e Assure that collection strategies are being implemented and that established time frames and deadlines to bring the strategy to fruition are being met;

f Assure that corrections of documentation deficiencies on assets are made in order to enhance their saleability for bulk sales or refinance purposes or to improve their collectability in cases of documentation weaknesses;

g Monitor the progress of the liquidation of assigned assets by reviewing the collections made, the type of repayment plans being negotiated, and methods and procedures used to achieve collection;

h Review the asset review reports and collection activity with each officer and discuss the activity or lack thereof; and

i Assure that assets in litigation are being pursued expediently and to the fullest extent possible and that the current litigation strategy is still appropriate, i.e., the least expensive way to achieve collection of the assets for maximum present value.

5 Confidential Relationships

All Bank employees should realize that it is very important to protect the confidential nature of the debtor's relationship with the Bank.

6 Specialized Lending

Certain Pool Assets of a large size and specialized nature will be assigned to a specialized area of the Bank or specifically designated officers within parameters set by Credit Policy. These specialized loans are discussed in Section VI, and presently include credits involving:

a Real Estate

b Energy

c International Risk

d Commercial Finance

e Mortgages

04-02.004 CREDIT REPORTING AND FORECASTING FUNCTION

The Credit Reporting and Forecasting Department provides an independent evaluation of the quality of the Pool Assets, as well the effectiveness of its credit policies, practices and procedures. Credit Reporting and Forecasing is responsible for:

1 Administering the Asset Review Committee process.

2 Ensuring the appropriateness of reserves and assessment of fair market value (on Pool Assets)

3 Reviewing and approving recommendations concerning fair market value of Pool Assets, including charge-offs and reserve amounts on specific assets, or groups of assets, in order to bring them to fair market value.

4 Reviewing and approving recommendations for change in performing status of Pool Assets.

5 Conducting targeted examinations as may be necessary and appropriate.

6 Coordinating regulatory authority examinations.

7 Conducting the cash flow forecast as required.

8 Participating in special projects related to assessment of credit quality conditions.

b) Any person or entity with whom the officer has a personal business relationship; or

c) Any entity in which a party under (1) or (2) above has controlling interest (actual or beneficial) or a policy-making role.

This policy includes the servicing of checking accounts and any other deposit accounts which can be overdrawn or paid against uncollected funds as these are extensions of credit.

2) The Bank should avoid all lending transactions which could result in a conflict of interest between the Bank and its borrowing customer. In this regard, additional risk is involved if "Trust" (the NCNB or NCNB Texas Trust Department or Trust Company, as applicable) is associated in any manner, which may include an extension of credit where:

a) The stated or ultimate obligor is:

i) A trust for which Trust is the trustee, or

ii) An entity owned by a trust for which Trust is the trustee, or

b) Trust serves as the trustee for a borrower's debt issue, including Industrial Revenue Bonds.

Any credit transaction that meets one of the above criteria must be approved by a Credit Strategy and Approval Officer.

b Loans for Questionable or Illegal Purposes
Under no circumstances should credit be extended to a person or entity engaged in illegal business activities.

04-02.005 ETHICS AND PERSONAL CONDUCT

1 Policy

All employees of the Special Asets Bank Division are subject to the Ethics & Personal Conduct Policies of NCNB Texas National Bank.

Additionally, the Special Asset Bank will not make loans or other extensions of credit to officers or employees of NCNB Texas without Oversight Committee approval. Individuals employed by the Special Assets Bank may apply for loans from the Operating Bank of NCNB Texas under its existing policies and guidelines.

The Special Asset Bank will honor the terms of any note assigned to it; including employee loans. However, any employee of the Special Assets Bank not performing according to the terms of such loan will be subject to the same personnel policies and guidelines, then in effect, issued by NCNB Texas.

All employees of the Special Asset Bank are subject to any disclosure requirement imposed upon NCNB Texas by any regulatory agency. The Special Assets Bank will provide the Oversight Committee a quarterly report of all loans directly due from SAB employees that are in default more than 90 days (see 04-EXH.047).

This policy applies to all employees of the Bank.

2 Specific Requirements Regarding Extensions of Credit

a Loans with a Potential Conflict of Interest

1) No officer should make, service or join in the approval of any loan or other extension of credit to any of the following:

a) Himself/herself or any relative through blood relationship or marriage;

3 Purchase of Assets by Employees

No employee of NCNB Texas or FDIC shall be permitted to purchase any asset, in any form, of the Special Assets Bank. To help insure compliance with this policy, the Asset Disclosure Form (04-EXH.014) must be completed on sales of all assets (OREO, OIA and loans) and incorporated into the appropriate credit file.

4 Administration and Responsibilities

a Managers
Primary operational accountability for the standards set forth here rests with the Bank's managers. Sound ethical standards are the responsibility of every officer and employee of the Bank.

b Credit Policy
It is the special function of Credit Policy to monitor and enhance the execution of all Bank policies.

04-10.001 RISK RATING OF CREDIT EXPOSURE

At the current time, the Bank does not provide Risk Ratings on all assets. Risk Ratings were formerly utilized, in part, to establish the Asset Pool. Those assets formerly rated 8, 9, or 10 were transferred to the Asset Pool utilizing an alpha code of C in conjunction with the Credit Concentration System. Only credits of the Shared National Credits Area are rated for compliance with the Office of the Comptroller of the Currency (OCC).

Date: 12/31/88 Also See:

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04-10.002 SERVICING OF PROBLEM CREDITS

The following comments are intended to serve as general guidelines in the handling of problem assets, and are supplementary to the policies and procedures contained in this Manual. However, it is also recognized that in many cases the Bank will not have perfect information. Therefore, it is important to justify exceptions to the Bank's credit policies or general guidelines in credit approval documents or other credit memoranda to ensure that the Bank's documentation with respect to its actions is complete.

1 Financial Statements

a Overview

If the debtor advises the Bank that debtor has been unable to obtain refinancing and desires to pay on an extended basis, specifics should be obtained as to the sources that have refused refinancing. Except for an initial period to allow the debtor time to explore and obtain refinancing, the credit officer should not agree to withhold action against the debtor unless the debtor provides current financial statements on all obligors in the credit and the Bank has had an opportunity to properly review the debtor's current financial status.

It is the policy of the Bank that recommendations regarding work outs, restructures, compromises and releases of guarantors must be supported by an evaluation of the debtor's and/or guarantor's current financial condition.

This information is required in order to enable the credit officer and those officials of the Bank who review and approve these recommendations to make an appropriate decision. It is important that this information be accurately and uniformly reported so that the Bank may be fully informed as to the financial condition of the principals involved.

Financial statement analysis can also be a means of projecting the effects an action will have on a financial statement. For example, a borrower's financial statement can be projected after a proposed settlement (pro forma) to determine the viability of the settlement from the borrower's standpoint. If bankruptcy is possible, the effect the bankruptcy action would have on the financial statement could also be projected. Since detailed knowledge of bankruptcy law is required to make such a projection, the credit officer should obtain the services of legal counsel to assist in its preparation, if appropriate.

b Submission of Financial Statements
Of primary importance in financial statement analysis is the requirement that credit officers request and receive timely and complete financial information from the debtors. Most loan agreements provide the Bank with the right to obtain this information in situations where it is felt that repayment might be doubtful. In addition, loan agreements usually impose an obligation on the debtor to provide timely financial statements as a condition of the credit.

Credit officers should promptly request statements at the first sign of a problem or on the date called for in the loan agreement. Credit officers should monitor the timely submission of statements. Failure to submit timely financial statements is a good indication that the debtor is experiencing financial difficulties, and may, under a loan agreement, create an event of default.

It is preferred that personal financial statements be completed on the Bank's form. This form provides for a more detailed financial disclosure than might otherwise be received from the debtor or guarantor. In situations where the

Bank's financial statement form is not used, the statements should be signed and authorization obtained from the individual(s) to allow the Bank to verify the information furnished. In addition, it is important to obtain detailed information on the amount and sources of the debtor's cash flow, and contingent liabilities, which are not always evident.

The financial information in the personal financial statement should be presented on a market or current value basis as opposed to a historical cost basis. In the case of real estate properties, it is helpful to know cost, market value and the date the property was acquired. Personal financial statements may, in some cases, be prepared by CPAs. However, very few of these are audited and would require the same extent of investigation as the non-CPA prepared statement.

Federal Income Tax Returns are a very good source of financial information. It is the Bank's suggested practice to request the last three years of income tax statements from each party obligated on an asset. In the event a debtor states he has not filed a particular tax return, a copy of the extension request sent to the IRS should be obtained. As in the case of financial statements, once obtained, all tax returns should be extensively reviewed. Particularly valuable portions of tax returns are the various subsidiary schedules which should be reconciled with the information in the debtor's financial statement. The debtor should be required to satisfactorily explain all discrepancies.

With respect to corporate financial statements, the Bank should insist that these financial statements be prepared in accordance with Generally Accepted Accounting Principles or in accordance with standards suggested by the American Institute of Certified Public

Accountants. Corporate financial statements may be prepared by a CPA and consist of a full audit or merely a review of the records. Alternatively, the statements may be prepared by in-house accountants in accordance with their usual bookkeeping system, although acceptance of such statements is discouraged in view of the alternatives. It is, therefore, important to know what types of statements are involved to determine the extent of the verification required. Corporate financial statements are usually prepared on the historical cost basis as an ongoing concern. It is worth mentioning that the values shown on the financial statement may not necessarily be indicative of the liquidation value of the items. In addition, one should be informed as to the costs associated with realizing the liquidation value.

Reference is made to Section V of this Manual concerning specific requirements for audited financial statements of businesses and individuals.

A WORD OF CAUTION
It is important to preserve the confidential nature of the financial statements so as not to infringe upon the debtor's right of privacy.

c Verification of Financial Statements
It is the responsibility of the credit officer, where possible, to verify the accuracy and completeness of the items shown in the financial statement. This may be accomplished by direct verification or confirmation from third parties such as appraisers, stockbrokers, financial institutions, etc. Given the extreme volatility of asset values in recent years, statements prepared on either a historical cost or recent market basis may not reflect an accurate position in terms of current values. This is true even though the statements may be audited. An adjusted statement prepared by the credit officer

using the verified information often more accurately indicates the debtor's true financial condition than does the original statement.

Depending on the complexity of the financial statements and the magnitude of the action under consideration, the account officer will employ different degrees of verification. A proposed principal compromise will require far more investigation than a 60-day deferral of a scheduled payment. The costs of verification to be incurred should be measured versus the size of the compromise involved. For example, a $2,000 allowance for investigation appears very large when viewed against a $10,000 offer. However, if the debt is $100,000 the $2,000 expense may keep the Bank from making the substantial error of accepting a token payment from a debtor in much better financial condition than originally portrayed. On balance, utilization of a thorough approach in analyzing the adequacy of offers will yield a recovery many times over cost. The credit officer's memorandum of recommendation should state the results of the investigation.

If the debtor lists numerous real estate properties on the current statement, the account officer should obtain relatively inexpensive "opinion of value" appraisals on about half of the properties in order to test the veracity of the debtor's valuations.

When the debtor lists a partnership interest in a limited partnership holding title to real estate, it is necessary to have a current appraisal and to know the amount due on all liens against the property in order to verify the reasonableness of the asset valuation carried on the debtor's financial statement. For example, the debtor could properly, for financial statement purposes, reflect the valuation based on cost less prior liens times partnership interest. Such a valuation basis may have no bearing on the real value of the partnership interest and yet it would not be a fraudulent presentation. Failure to properly investigate these matters can lead to poor judgment as to the adequacy of the settlement offer.

The credit officer should also inquire as to the valuation method used for all listed assets. For example, cost basis valuations may be very misleading. Also, situations may be encountered where the debtor's assets are protected by joint ownership or homestead allowances, thereby allowing the debtor to protect a sizeable amount of assets from execution.

It is also important for the credit officer to compare the assets divulged in the financial statement to assets reflected on prior statements provided by the customer. Inquiries should be made concerning the disposition of significant assets formerly listed, but that are no longer shown by the debtor. The credit officer should also test the major liabilities and inquire as to whether any of the liabilities are owed to family members or business associates.

Recommendations are received asking that very large balances be settled for an amount which approximates the amount which could be realized through attachment and execution against the obligor. The substantiation basically is that the amount recommended represents the maximum that could be expected to be realized through legal means. These types of settlements are generally not acceptable unless it can be shown that the settlement amount exceeds the amount that could be realized by pursuing all of the legal remedies (including obtaining and executing judgement against the assets of each obligor) at the Bank's disposal. To properly evaluate this alternative, a credit officer should adjust downward the amount expected to be received through judgement execution due to the additional time period involved and the additional legal costs that will be incurred.

The credit officer should estimate what the borrower's and spouse's combined net worth will be after the proposed settlement. The bank does not expect the borrower and spouse to give up most of their equity position when only one of them is obligated. However, aggressive negotiations should be conducted to recover some of the spouse's equity. This is particularly true if there is reason to believe that assets have been transferred to the spouse.

Independent, outside verification is particularly important in the case of an uncooperative borrower, litigation, or when financial statements provided by the borrower give indication that significant assets have disappeared from more recent financial statements without adequate explanation.

d Affidavit of Financial Condition
In all cases where the Bank intends to settle with an individual debtor for less than the amount originally owed, an Affidavit of Financial Condition (04-EXH.054) must be completed by the debtor prior to final approval of the settlement. Exception to this policy may only be approved by the Bank President, Senior Credit Policy Officer or Senior Credit Strategy & Approval Officer. Further, it should be provided in the settlement agreement entered into with the debtor that if this Affidavit of Financial Condition later proves to be fraudulent, the full amount of borrower's obligation will be reinstated, as if no settlement had occurred.

2 Collateral

In order to make fully informed decisions on an asset, it is necessary to know the value of the collateral. Regardless of how much expertise the credit officer has in a particular area, the credit officer is required to obtain independent appraisals for valuations. The most appropriate place to obtain the fair market value of collateral is a current appraisal from an expert appraiser.

Credit officers should coordinate the timing of any appraisals that are ordered, with the timing of the restructure/settlement of debt or the sale of the assets. Specific requirements concerning appraisals, including instructions to be given to an appraiser of real estate, are contained in Section 04-08.001 and 04-EXH.026 of this Manual. Generally, the appraisal requirement for the Bank is annually, or more frequently if deemed necessary by the credit officer or specifically required elsewhere in the Credit Policy Manual.

A "current" appraisal means that the appraisal is less than one year old. In times of rapidly fluctuating market values, however, it is advisable to obtain appraisals more frequently. The credit officer should exercise judgment with respect to the age of an appraisal before taking action.

All appraisal reports must be in writing. The credit officer should not divulge the identity of an appraiser or the appraised value to any prospective purchaser, broker, or other Bank employee who does not need the information as part of his/her duties. Additionally, the credit officer should not disclose the appraised value to the debtors.

For additional information regarding collateral, including specific information on collateral documentation, insurance of collateral and Other Pool Assets, and release of collateral, please refer to Section VIII.A.

3 Meetings With Debtors and Their Representatives

Since credit officers will often have to meet with debtors, it is important to observe the following guidelines:

a Preparations for Meeting
Prior to meeting with a debtor, the credit officer should be completely familiar with the information that is on file concerning the debtor. If a negotiating session is anticipated to be particularly difficult, two Bank personnel are advised to attend. This recommendation is intended for the credit officer's protection (against false claims by the debtor about the content of the meeting) and to assist the officer in negotiating with the debtor. The second Bank representative will provide additional support that will benefit even the most experienced credit officer, and will assist the credit officer in evaluating and reducing to memorandum form exactly what was accomplished at the meeting. In the event the debtor is accompanied by a legal representative or if the debtor is an attorney, policy requires that approved Bank counsel be present. **Only under rare circumstances should a credit officer meet with a debtor's attorney without an attorney representing the Bank present.**

Meaningful settlement negotiations should never be conducted with a debtor without first obtaining and reviewing all relevant financial information and without having at least an informal appraisal of the collateral and a determination of any prior lien positions of other creditors. It is a mistake for a credit officer to agree with the debtor on a settlement amount, and then set out to gather the required financial information so that a case can be prepared.

When a debtor first proposes a meeting, the credit officer should advise the debtor exactly what financial information is required by the Bank. If a debtor attempts to force a credit officer into meeting without adequate review of the financial information by arriving at the office with the information, the officer should politely inform the debtor that a discussion cannot take place until the officer has had time to review the material in question. A brief meeting may be held to review the content of the information in order to determine if it is adequate in form and to determine if additional information is needed. However, no discussion concerning work out or settlement should take place. At this time the credit officer should agree with the debtor on the date and time of the future meeting.

b The Meeting
When meeting with a debtor, it is in everyone's best interest to understand the credit officer's level of authority. The meeting should begin by informing all present that the credit officer has authority only to accept payment in full of the debt. Furthermore, the officer should advise that any arrangements reached at the meeting, which appear to be mutually acceptable, will be presented in the form of a recommendation to the appropriate higher levels of authority. Care should be taken to ensure that all parties present understand that any such arrangements will not be effective until approved by these appropriate levels of authority.

It is recognized that each credit officer has his own style of conducting meetings. **It is suggested that each new credit officer arrange to attend debtor meetings conducted by more experienced credit officers before actually conducting his own.** Any questions should be discussed with the credit officer's manager.

At the conclusion of each meeting, care should be taken to spell out in detail the future actions required by each party in attendance. Specific deadlines should be established for accomplishing those actions, i.e., debtors submitting additional documentation, credit officer preparation of credit approval documents etc. Each of these specific details should be subsequently confirmed in a letter from the credit officer to the debtor.

To effectively negotiate settlement offers, it is important to fully evaluate both the borrower's ability to pay and all legal factors involved in obtaining judgment. The credit officer should then respond to offers with aggressive counteroffers until a favorable settlement offer can be recommended. Legitimate offers and counteroffers should be in writing.

The policy that the Bank will not extend binding commitments until final approval is obtained can not be over emphasized. To avoid being forced into unwanted commitments or the potential liability associated with retraction of proposal type offers, it is essential that the credit officer clearly state that all communication (verbal or written) prior to issuance of a binding commitment is for the purpose of each party gaining a complete knowledge of the proposed transaction. In particular, term sheets, outlines, offer letters, etc. issued prior to final approval must contain statements, conspicuously placed, that state the non-binding nature and purpose of the communication.

4 Collection of Assets

Depending on the status of the note, a credit officer has different duties to perform:

a Paying As Agreed
As long as the debtor is paying in accordance with the terms of the note and, where applicable, the debtor is conforming to all terms of the loan agreement, the Bank generally cannot require the note to be paid off. The debtor should, however, be encouraged to pay the loan prior to maturity, or to work with the Bank with the objective of getting the relationship improved to the point it can be transferred to NCNB Texas, or otherwise refinanced outside of the Bank as quickly as possible.

b Delinquent Loans
Upon determining that an asset assigned to a specific credit officer has become delinquent, that officer must take immediate action. **As soon as a loan is delinquent for 15 days on any contractual payment, the debtor must be sent a notice in writing of the delinquency.** These formal notices serve as a reminder to the obligor that the Bank expects to be paid promptly, and help to keep pressure on the obligor to resolve the matter.

c Notification to Indirect Obligors of Default
Whenever the debtor is in default, such as when the loan is 15 or more days past due or property taxes are delinquent, **all co-makers, guarantors, general partners and endorsers** should be sent copies of the letters addressed to the debtor in order to allow these obligors to protect their interests and to protect rights of the Bank to proceed against these parties if required. Advice from counsel may be sought with respect to preserving the Bank's rights against all parties, including issuers of standby letters of credit and non-signing spouses. Failure to properly advise the indirect obligors of the maker's default could make enforcement of their liability more difficult, if not impossible.

d Maturing Loans
If the note is maturing and there has been no indication of payoff, the debtor should be notified. If a note remains unpaid at maturity, a debtor should be notified that he has a clearly specified number of days to pay, or steps may be taken to begin enforcing the rights of the Bank, including litigation or the foreclosure and liquidation of collateral. The credit officer should consult with approved Bank counsel before "formal demand" is made as described below. **Before formal demand is made, serious consideration should be given to the actions to be taken if the demand is not met.**

1) Secured Credits
After default by the debtor, the credit officer should make an effort to improve the overall collateral position of the Bank. Failing this, a determination must be made of the appropriate strategy to be pursued, including immediate action necessary to realize on existing collateral. The credit officer must first make "formal demand" upon the obligor(s). If payment is not received by the end of the formal demand time period, appropriate action should be taken to acquire and sell the collateral. In some undersecured situations, the credit officer may be able to sell the collateral, apply the proceeds to the loan and enter into a work out program for the remaining balance of the loan. This course may offer a better prospect for recovery of the deficiency than litigation.

Please be mindful to review with counsel the Bank's rights, on certain individual loans, to act on its collateral.

2) Unsecured Situations
Unless the credit officer can acquire a reasonable amount of collateral in consideration for extending an unsecured debt,

the credit officer should, after an appropriate period (to allow for refinancing, if possible), make "formal demand" upon the obligor(s). If payment is not received after the formal demand, the asset should be referred to approved Bank counsel.

e Foreclosure or Repossession
Foreclosure and repossession are significant actions, and while the Bank realizes that they are sometimes the necessary course of action, the Bank does not undertake them lightly. There are situations where the bank would be best served by pursuing a judgment against the obligors in lieu of acquiring the collateral. This course of action should be considered any time the perceived value of the judgment exceeds the appraised value of the collateral. With this in mind, the following general guidelines for foreclosure or repossession are established:

1) When the debtor is in default, the credit officer must take into consideration that the value of collateral often will decrease over time while holding costs continue to accrue (i.e., real estate taxes) and therefore foreclosure or repossession of the property early in the default stage may be necessary to protect the equity in the property. Generally, delinquencies of 60-90 days are very serious and foreclosure or repossession should be considered.

2) The credit officer should contact his manager if a question arises regarding arrangements with qualified and reputable firms to legally take possession or title and sell collateral.

3) Sale of the collateral should be accomplished in accordance with applicable levels of approval as soon as it is determined this is

the appropriate course of action in order to reduce storage and other costs and to minimize reduction in value to the property.

4) In less routine situations, the credit officer should be guided by legal advice concerning how to proceed with a foreclosure or repossession action and sale of the collateral in a "commercially reasonable manner" pursuant to U.C.C. requirements so that the Bank may retain any applicable deficiency rights against the debtor and guarantors.

Additional specific information on foreclosure will be found in 04-10.005.

f Litigation

1) Considerations
In some instances the credit officer may find the debtor to be uncooperative or unwilling to establish a realistic payment arrangement. If the default is serious, the credit officer may consider initiating legal action to attempt recovery on the asset. The credit officer should consult with the Special Counsel in reviewing alternatives to litigation, as well as the instigation of litigation itself. The decision to "refer an asset to litigation" should not be made lightly. The credit officer should use good judgment and discretion in considering whether legal action should be pursued against debtors as a last resort to achieve recovery on assets. A lengthy period of time, quite possibly several years, will pass between the time an asset is referred to counsel and final resolution of the matter.

Prior to seeking legal action, the credit officer should consider the financial status of the debtor and the likelihood that eventual recoveries will exceed the probable legal fees to be incurred. The Bank must also consider, at all times, whether the net realistic recovery through litigation is likely to exceed amounts obtainable by continuing to work with the debtor on workout arrangements. If the debtor and guarantors are very weak financially and simply do not have the means to pay the debt, it would be preferable to obtain and analyze their financial statements for the purpose of determining a suitable compromise on the asset without first incurring the cost of litigation. In these types of situations, a judgment, at considerable expense, would probably accomplish very little because a compromise of the judgment in the future would appear to be the only realistic possibility for recovery.

On the other hand, uncooperative debtors who are believed to have the means to pay all or a significant portion of the debt should be vigorously pursued through litigation. Debtors or guarantors who refuse to give the Bank a current financial statement or who refuse to pay in accordance with their ability to pay should be considered as uncooperative.

Other considerations will include the likelihood of deterioration in the value of collateral, past, current and future income and the available equity in debtor's assets.

Prior to referring an asset for litigation, every attempt should be made to convince the debtor to pay in full or to reach an appropriate compromise settlement. Once it is determined that a debtor does not plan to honor the obligation in a timely manner, various liquidation strategies must be considered, including both legal action and the liquidation of collateral.

When the determination is made that legal action should be taken, the credit officer should then discuss the matter with the Special Counsel. The Special Counsel will determine the proper outside counsel, and proceed with providing the legal counsel with all pertinent information and documents to begin the litigation procedure, in conjunction with the credit officer.

At no time should a credit officer refer a file for litigation to an outside counsel without the initial approval of his/her manager, obtaining required credit approval, and coordinating with the Special Counsel.

Once initiated, litigation proceedings normally should not be delayed to allow time for negotiations or consideration of settlement. Borrowers should be told that the submission of settlement offers is not a basis for continuances. The added legal expenses that inevitably result from such delays are not justifiable in most cases. Appropriate guidance should be given to outside counsel as to the bank's willingness to consider settlement of the litigation and the necessary procedures to allow the bank to evaluate the advantages of settling or continuing litigation. This procedure is not intended to prohibit legitimate delays in legal proceedings. For example, counsel might recommend a continuance in a trial date because of inherent legal problems with the case that would adversely affect successful conclusion of the litigation. In addition, borrowers are frequently much more willing to enter into realistic settlement negotiations just before a trial because they know the judgment will enable the bank to enforce recovery of the judgment balance.

2) Responsibility for Monitoring Assets in Litigation

A credit officer's duties in no way end once an asset is referred to legal counsel. The main difference is that instead of attempting to convince a debtor to take actions that are in the best interest of Bank, the credit officer must now convince an attorney to take actions that are in the best interest of Bank. While it is not always the case, experience suggests that the attorney assigned to an asset will need to be encouraged by the account officer to institute timely action.

After an asset is referred, the credit officer should regularly review the litigation file. The review process is to ensure that an asset is promptly assigned to an attorney after it is referred, that this attorney initiates the appropriate court action in a timely fashion and that the attorney promptly advises the credit officer of any settlement offers submitted on behalf of the debtor(s).

If at any time the credit officer believes that the assigned counsel is not acting in a timely manner the officer should, with the concurrence of his manager, submit the concerns in writing to Special Counsel who will then discuss same with the Senior Credit Policy Officer and/or the Bank President. A decision will be made at that time as to the best remedy for the situation.

The Credit Administration Division maintains an accounts payable tracking system designed to provide credit officers and management the ability to monitor all costs associated with individual assets or relationships. As reports are periodically issued from the data associated with the tracking system, the credit officer should review accumulated costs to date with a special emphasis on legal fees and expenses. This review will enable the credit officer to: (1) evaluate the effectiveness of continued litigation in relation to the projected recovery on the asset, and (2) consider the appropriateness of the legal fee billing in relation to the progress of litigation.

3) Post-Judgment Activity
After obtaining final judgment against an obligor, the credit officer should immediately take appropriate steps to enforce recovery of the judgment balance and advise legal counsel how to proceed to collect the asset. Unless the costs are prohibitive relative to expected recoveries, outside counsel (or a contingency fee attorney for modest value assets) should immediately perform a borrower's financial examination under oath to discover assets available for attachment or potentially fraudulent transfers. A borrower's financial examination provides substantially more information about the obligor's financial condition than a typical personal financial statement; consequently, such examinations can aid in improving and expediting recovery on the asset. Additionally, the credit officer can have real estate records searched for property owned by the borrower, bank accounts attached, the borrower's salary garnished and Department of Motor Vehicles records searched for vehicles free and clear of liens. After determining which of the borrower's assets may have equity, the credit officer should have the assets attached and take appropriate measures to enforce recovery of the judgment.

5 Modification of Existing Credits

In some cases after a credit officer has thoroughly reviewed all information available on an asset and analyzed the financial statements and tax returns of all obligors, the credit officer will conclude that it is not possible for the Bank to immediately collect payment in full.

a Available Actions
Assuming that the obligors are cooperative, there are three basic types of collection possibilities:

1) Loan Work Outs
An alteration of payment terms and/or maturity date with no compromise of principal or accrued interest or decrease in the contractual interest rate.

2) Restructures
An alteration of payment terms and/or maturity date together with a reduction of the contractual interest rate. Any proposal to waive penalty interest (resulting from an increase in interest rate as provided in certain notes, that takes effect upon default) is considered to be a restructure. No compromise in the principal balance is involved.

3) Compromises
A forgiveness of a portion of principal and/or interest due.

Caution: Credit officers should not consider entering into any work out, restructure or compromise if the debtors and guarantors refuse to provide current financial statements, and in some instances, copies of income tax returns. Exceptions to this rule should be extremely rare. One possible exception may be a very short term work out during the first 60 days of default.

Refusal on the part of the debtor, guarantors or endorsers to provide necessary financial information should be treated as a serious matter, and the debtor should be immediately advised that failure to provide the requested information may trigger a recommendation to initiate litigation. While there are several possible reasons why a debtor or guarantor will refuse to provide financial information, the credit officer must assume that this refusal indicates that they have something to hide.

Additional Caution: If through an analysis of financial information or as the result of an independent appraisal of the collateral, the credit officer determines that the loan is fully secured or that the obligors are very solvent, no work out, restructure or compromise should be considered. If the obligor refuses to pay or refinance, various liquidation strategies, including both legal action and the liquidation of collateral, must be considered.

If, however, analysis indicates that a reduction of interest rate or a partial forgiveness of interest is appropriate at this time, every effort should be made to negotiate a position to take advantage of any significant upturn in the borrower's condition such as an equity interest in a business borrower.

b Loan Work Out Parameters

Work out agreements are essentially a trade negotiated by a credit officer with a debtor. In return for an additional period of time, the debtor agrees to pledge additional collateral and/or make periodic payments. If a loan is unsecured or undersecured, a credit officer should look for available assets to better secure the Bank's position. The Bank's position may be strengthened by allowing a work out in which the debtor improves collateralization of the loan. Assets such as stocks, bonds, cash value of life insurance, savings accounts, certificates of deposit and mortgages on properties owned by the debtor may be available.

As a part of the loan work out program, the credit officer should explore whether the Bank can obtain the guarantee of the spouse when confronted with debtors who have a spouse not presently a maker, guarantor or endorser on the loan. The obligation of both husband and wife is generally valuable whenever execution against jointly owned property is necessary or the taking of secured positions against jointly owned property is desirable.

In rare instances the Bank will negotiate an Interest Only Work Out. In such cases, the debtor is allowed to make only interest payments. This option is reserved for situations in which the debtor has provided financial statements evidencing an inability either to pay the loan in full immediately or to make substantial periodic principal payments. There are situations where interest only work outs are far more preferable than litigation, particularly in instances where the debtor is experiencing temporary financial difficulties that preclude the debtor's ability to make substantial payments on the indebtedness. As in any work out plan, the credit officer should attempt to have payments made on a monthly basis. This will allow the Bank to realize more quickly when a debtor has decided not to, or becomes unable to, make any more payments. The Bank will then be able to move to foreclose on the collateral in a prompt manner.

The Bank has established the following general Parameters for Loan Work Out Programs for guidance purposes:

1) Term Preferable
   Three years or less is preferable; however, it is in the Bank's best interest to negotiate

with the customer the shortest term that is mutually satisfactory, which may be longer than three years. Any term in excess of five years requires approval of the Senior Credit Strategy and Approval Officer, the Senior Credit Policy Officer or President of the Bank.

2) Interest Rate Preferable
Market rate or higher, not less than the original contract rate, consistent with applicable usury laws. If the credit officer substantially improves an undersecured or unsecured position into a far better secured position, a rate anywhere at or above the contract rate is acceptable.

3) Financial Statements
Renewals should not be granted unless the obligor(s) provides the Bank with a current financial statement. Prior to approval of any work out arrangement, the credit officer must review the financial statement to ascertain whether the work out is necessary. The credit officer should, whenever the asset is less than fully secured, attempt to obtain as much collateral as needed to best improve the Bank's position.

4) Legal Review
If questions arise regarding the Bank's perfecting its security interest in collateral, the advice of approved Bank counsel should be obtained. If no attorney is currently involved in the account, the Special Counsel should be consulted for referral to an appropriate attorney. If an attorney is currently assigned to the account, continue to use that attorney. Decisions to extend secured loans may be detrimental to existing collateral, so again close coordination with counsel is necessary. The credit officer must be satisfied that the work out program will

not cause the release of any obligor(s) from liability or invalidate existing collateral. Legal advice is necessary whenever extensions are granted where consent of all obligors will not be possible. If the Bank forbearance is based upon documentation deficiencies, these should be cured as part of the workout program (if possible without jeopardizing recovery).

5) Justification
Work out programs should offer better prospects of recovery on the asset than alternatives such as foreclosure or litigation. Work out programs are not to be entered into when the existing collateral for the asset and the borrower's liquidity and cash flow are believed to be sufficient to ensure payment of the obligor's debt. In order to determine the true value of collateral, the credit officer should deduct from its liquidation appraisal value the costs associated with taking possession of the collateral and all costs necessary to sell it.

c Restructure Considerations
When loan restructures are utilized by the credit officer, the Bank generally prefers to set the interest rate at the market rate for similar loans of similar risk but not less than the note rate as of the Commencement Date. When negotiating an interest rate reduction, the credit officer should follow the general Loan Work Out Parameters as outlined in this manual. From time to time there may be good reasons to recommend the reduction of an interest rate from the original note contract rate. Some of the situations which may create reasons to set the rate below the note rate could include:

1) The debtor is in very poor financial condition and allowing the concession may enhance the Bank's chances of maximizing recoveries on a present value basis;

2) Collectability of the asset in full is highly questionable, and in exchange for the interest rate concession the Bank is to be provided substantial new, good quality collateral or valuable guaranties;

3) The Bank is in poor legal position, and the restructure offers an opportunity to eliminate the legal problems of enforcing the indebtedness or realizing on available collateral; or

4) Other good business reasons to allow a concession.

Properly substantiated, such situations are actually opportunities to enhance overall recoveries on the assets. In other words, proper use of interest rate concessions can be a very positive tool in enhancing overall recovery on the asset.

Reference should be made to Section X.H.2., Troubled Debt Restructurings, and 04-EXH.042, Troubled Debt Restructures, of this Manual concerning regulatory considerations when making interest rate concessions.

d Compromises
The credit officer is encouraged to pursue compromise settlements on assets whenever the debtor clearly does not have the ability to pay the indebtedness in full or whenever, in the judgement of counsel, there are serious legal problems associated with obtaining a judgement for the full indebtedness. Settlements can frequently be substantiated on a combination of legal and business considerations.

The Bank generally takes a firm stance on settlements where debtors, guarantors or endorsers have created a weak financial position by transferring their assets to family members or business associates via legal maneuvers. Whenever the Bank can determine that such legal maneuvers have been used, the Bank will not, in most cases, settle with debtors based solely on the analysis of collectability on the remaining assets reflected on the obligor's financial statements. Instead, the Bank will typically prefer to vigorously pursue fraudulent conveyance actions, against the obligors, unless legal counsel advises that such actions would be expected to have less than 50% chance of success. There are many factors to be considered in these types of cases; therefore, credit officers are encouraged to negotiate this type of settlement to the best of their abilities. This type of settlement is more prone to not being approved than any other type of recommendation; nevertheless, the Bank encourages its credit officers to make their recommendations based on sound business principles.

Complete information regarding all such transactions must be submitted. This information should be presented in a clear and concise manner and the credit officer should make certain that all the necessary data on which to base a recommendation is included. Such information should include the name of each obligor, date and maturity of the indebtedness, interest rate, date to which interest has been paid, and a description and valuation of any security. The presentation on a compromise settlement should be accompanied by the debtor's sworn financial statements and include a detailed analysis of the financial statements. If a proposed compromise settlement involves a note secured by a real estate or chattel mortgage, an independent appraisal of the security made by a disinterested party should be included. In a compromise of debt with an individual, an Affidavit of Financial Condition (04-EXH.054) must be filed.

The Bank would prefer credit officers to actively pursue and recommend settlements rather than holding back for fear of the recommendation not being approved. If a particular settlement offer is too low, senior management ordinarily will suggest a counteroffer to the debtor. A decision by a credit officer not to recommend a compromise believed to be in the Bank's best interest could prove to be very costly through the buildup of unnecessary legal fees and the possibility that the debtor's financial condition may deteriorate, thereby causing a lower collection later.

Although the Bank far prefers cash settlement offers, settlement or release of guarantor recommendations are occasionally made, providing for an initial cash payment with the balance of the agreed amount payable on terms. Less frequently, recommendations are made to accept a compromise with all payments to be made on terms. Generally, whenever it is necessary to recommend such transactions, the Bank should attempt to obtain a market rate of interest for the scheduled payments, within appropriate usury statutes.

In order to enhance the likelihood of full recovery of the settlement offer and in order to strengthen the Bank's settlement position, attempts should be made to negotiate a "Consent Judgement" or similar judgement for the full amount of the current indebtedness whenever time payments are offered as opposed to all cash transactions. In some instances, the Bank may be unable to successfully negotiate a "Consent Judgement" for the full amount of the debt; however, it may be possible to negotiate such a Judgement for an amount substantially higher than the actual settlement amount. If the debtor were to default under the settlement agreement, the Bank's rights to collect the full debt or a major portion of the debt would thus be preserved. At the same time, the Bank would provide the debtor substantial incentive to avoid default. There will be circumstances where these procedures will not be possible or practical; however, many settlements have been structured along these lines. It should also be remembered that in Texas "Consent Judgments" are valid only if a suit is on file. It is possible that a debtor will agree to allow us to file suit, just to facilitate a "Consent Judgement".

Through these procedures the Bank wishes to avoid situations where, for example, a debtor is obligated to pay $200,000, but after analysis of all factors, a settlement offer of $40,000 is recommended on the basis of $10,000 per annum plus interest with the first payment due one year from date of agreement. In that type of situation, unless the Bank had some form of agreement in case of default, the Bank's rights would generally be limited to collection through suit on the unpaid balance of the settlement agreement rather than the much larger prior debt.

Without specific additional default penalties, a debtor or guarantor could vastly improve his position by defaulting on the compromise agreement, leaving only the cash collections received to the time of default to compensate the Bank for any forgiven amount. The settlement agreement should be carefully written to prevent such an occurrence, and to provide for full reinstatement of all obligations in the event of any default.

Present value analysis is utilized whenever a compromise or release of guarantor requires the Bank to take back a payment obligation. In some instances, the Bank is offered a payment arrangement of a certain amount of cash down with the balance of the settlement payable in installments with or without interest over a period of time. Frequently, the proposed interest rate is less than the rate that a financial institution would require if the obligation were sold on the open market. The Bank therefore uses present value analysis to determine the realistic cash value of the settlement.

Present value can also be used in compromise situations involving payments over time to evaluate the transaction versus straight liquidation of collateral and pursuit of the debtor for any deficiency, or to measure the value of the contemplated settlement versus anticipated recoveries in a bankruptcy settlement.

e Mutual Releases
Whenever the Bank enters into any compromise with an obligor involving an agreed on debt settlement amount, the Credit Officer must obtain a release from the obligor containing release language appropriate to the situation, as suggested and approved by counsel. If appropriate releases cannot be obtained, specific approval of the appropriate Credit Strategy and Approval Officer, or higher authority, is required. If the Bank is also asked to provide releases as part of the same Settlement Agreement, this release language must also be approved by approved Bank counsel and such credit approval authority as would normally be required in the specific transaction.

6 Documentation of File

a Preparation of Credit File Memoranda

Credit files should be maintained with current memoranda outlining trends and events, and facts or circumstances that come to the credit officer's attention and which could impact the value of any administered asset. This credit file memorandum should be geared to accommodate readers who may be unfamiliar with the history of the loan. As significant developments occur, an updated credit file memorandum should be prepared by the credit officer. A more precise definition of "significant" will evolve with experience; however, the following will serve as general guidelines.

An updated credit file memorandum should be prepared when:

a) The credit officer learns of an event (current or pending) or circumstances that may materially impact either the timing or the amount of a loan recovery.

b) The credit officer proposes to materially alter the previously reported collection program.

c) The results of a meeting with a debtor must be recorded.

This procedure should, in fact, be consistent with the normal practice of keeping appropriate management levels informed of material credit developments and should supplement, not replace, oral communications when circumstances warrant.

It is the responsibility of the credit officer to assure proper and timely notification to his manager, the appropriate Credit Strategy and Approval Officer and the credit file of significant events concerning his accounts based on the officer's judgement and criteria established by Credit Policy.

It is the responsibility of the credit officer to document properly the results of all significant meetings or telephone conversations with debtors. The originals of all such memoranda should be placed in the official credit file. Since these files must stand on their own, it is solely the credit officer's responsibility to make certain the information within them is correct and adequate.

Each of these memoranda should be clear and factual since the contents of these files may be subject to a subpoena in a legal action. Refer to Section V.M. of this Manual, Precautions When Dealing with Borrowers.

b Use of Desk Files

While the Bank allows the use of "desk files" (any file created by a credit officer and maintained in the credit officer's office for his personal convenience), the only official files are those maintained as the Credit Files and Collateral Files. The original of all correspondence, agreements, etc., must be maintained in the respective official file. Care must be taken to see that all information produced by a credit officer, such as documentation of phone calls and other internally produced information, be included in the official files. Under no circumstances are originals of any kind permitted in the desk file. It is suggested that the desk file not be a copy of the official file but, instead, include only the information needed to work the asset on a day-to-day basis. Since they are considered responsible for the content of the official files, credit officers are encouraged to check out the official files and work from them.

04-10.003 NON-ACCRUAL LOANS

The credit officer is responsible for identifying all loans which should be classified as non-accrual loans, based on the following guidelines.

1 Approval

Any change in the interest accrual status of a loan must be approved by Credit Reporting and Forecasting, after recommendation by the credit officer.

2 Placement of Loan on Non-Accrual

A loan **must** be placed on non-accrual status if the requirements described below in (a) or (b) are met, while the factors listed in (c) below must be strongly considered in the accrual status decision:

a Serious Doubt
Collection of future principal or interest payments is deemed unlikely, or

b 90 Days Past Due
Interest or principal payments are more than 90 days past due (the "90-day rule") **and** the loan is not **both** well secured and in the process of collection.

1) "Well Secured"
The book value of the Pool Loan (net of any previous charge-offs) must be supported by:

a) Collateral in the form of mortgages or liens on, or pledges of, real and personal property (including securities) having a realizable value sufficient to discharge the debt in full including interest; or

b) The guaranty of a financially responsible party.

In the case of claims against the estates of bankrupts, a loan is considered well secured if it is fully secured by a specific lien on real estate or personal property, or the claim of the bank against the estate has been filed, the statutory period for filing claims against the estate has expired, and the assets of the estate are clearly adequate to discharge all its obligations in full.

2) "In process of collection"
When collection is proceeding in due course, either through legal action (including judgement enforcement procedures which are expected to lead to collection in full) or, in appropriate circumstances, through other collection efforts which may reasonably be expected to result in payment of debt or its restoration to current status at an early date. A loan to a borrower in bankruptcy may be deemed in process of collection. In any case, the Bank should have a plan of collection setting forth the reason for the selected method of collection, the responsibilities of the Bank and the borrower, and the expected date of repayment of the debt or its restoration to current status.

Any loan which is 90 days or more past due, unless excepted above, must be on non-accrual unless the justification for continued accrual is documented.

c Other Considerations

1) Doubtful Classification
Any loan classified partially or totally as Doubtful will normally be recommended for non-accrual status unless specifically approved as a policy exception and reported to Credit Reporting and Forecasting.

2) Multi-Bank Credits
If any other bank in a credit is known to have put their portion of the loan on non-accrual, the credit officer should consider recommending the same treatment by the Bank.

3 Minimum Amount

To minimize administrative burden, loans of $25,000 and under which are past due 90 days or more should be charged off rather than placed on non-accrual status, unless the projected amount of recovery would exceed the expenses associated with such (i.e., legal fees and expenses, repossession expense, etc.).

4 Effective Date of Non-Accrual

The non-accrual status will be effective as of the date through which interest has been paid.

5 Removal from Non-Accrual Status

The decision to recommend the return of any non-accrual loan to accrual status should primarily be based on the borrower's cash flow and ability to repay the loan, and not simply on the adequacy of collateral value supporting a restructured or existing loan.

All loans restored to accrual status must satisfy the following conditions specified by the Office of the Comptroller of the Currency:

Loans which reach non-accrual status may not be restored to accruing status until all delinquent principal and/or interest has been brought current, or the loan becomes **both** well secured **and** in the process of collection.

6 Application of Interest Payments

Any interest received on non-accrual loans must be applied to the principal amount of active debt unless a different application is approved as a policy exception.

04-10.004 SET-OFF OF ACCOUNTS

No set-off will be attempted without authorization from approved Bank counsel. A borrower's accounts (demand, savings or time deposit) at the Bank are considered collateral for loans by natural operation of law. Consequently, the officer should foreclose and remove the monies from these accounts when deemed necessary to protect the Bank's loan asset. The Bank's set-off procedure will:

1 Authorize the creation and specify the location of the Bank's set-off ledger.

2 Provide for the documentation of exactly when (i.e., date and time of day) the set-off was made.

3 Instruct lending personnel in the procedures for setting off an account after business hours and on weekends and holidays.

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04-1. 05 FORECLOSURE OF COLLATERAL

Except for highly liquid and readily marketable assets, the Bank's acquisition of title to a pledged asset could result in the Bank taking title to a net liability or assuming asset management responsibilities which could be handled more effectively and cost efficiently by the debtor than by the Bank. In many instances, the Special Asset Bank is working with customers of known integrity who may have demonstrated the willingness and ability to manage, utilize or market the asset. Therefore, these decisions must consider the costs, benefits, liabilities and controls in place to protect the interests of the Bank associated with direct ownership of each asset.

1 Decision to Acquire Title

In order to develop the facts to make the decision to acquire title to an asset, the credit officer must assemble and evaluate all relevant data as follows:

a Review and update credit, collateral and loan transaction files, as appropriate.

b Obtain expenditure approval and request the opinions necessary to formulate a decision, which at minimum include the following:

  1) Approved Bank Counsel should:

    a) Review all documents related to the credit and the collateral to determine the status of liens and any pending issues, including successor entities; and

    b) Particularly regarding real estate (and when otherwise appropriate), update title information including details of all exceptions, easements and encumbrances, and order ad valorem tax certificates and federal tax lien searches.

2) Approved outside Bank appraiser (coordinated through Credit Administration) should develop an updated estimate of the fair market value of the asset. The independent appraisal update used to formulate the credit approval recommendation should reflect values on an "as is/where is" basis and "with all faults". The appraiser should also address the following when appropriate:

   a) In instances where repairs are essential for an item to have value or to significantly enhance the value, the appraisal should indicate that repairs should be made prior to sale and should reflect an adjusted value for the costs of such repairs.

   b) When assets should be transported to a different location to realize the highest value, the appraisal should recommend removal to the optimum location and include value adjusted for transportation costs.

c Notify the area which will be responsible for the asset after title has been conveyed to the Bank of the contemplated action so that an asset manager can be assigned to the transaction. If the asset is real estate, the notification form in 04-EXH.031 (Form F-1) is used.

d Meet jointly with approved Bank Counsel and the asset manager to:

1) Review the reports developed in response to 2) above.

2) Develop plan for transporting, securing, storing and insuring the asset once foreclosed, as applicable.

3) Identify any potential adverse conditions and the method most appropriate to investigate the

consequences of any such conditions, such as environmental hazards or product liability.

4) Determine a team strategy (including all critical dates) and action plan to resolve any open issues; as well as define responsibilities.

2 Development of Bid

When the Bank will acquire an asset through foreclosure or sheriff's sale, the price to be bid will extinguish a like amount of debt owed to the Bank, and establish the maximum deficiency which can be pursued against the debtor. Therefore, the credit officer must develop a reasonable and supportable recommendation in consultation with approved Bank Counsel and the asset manager, and when the asset is real estate, also an appraisal officer. The additional guidance in 04-EXH.028 should be followed when real estate is being foreclosed.

3 Approval

The credit approval documentation must be approved by appropriate authority prior to any notice to or agreement with the borrower. This documentation must include a Statement of Best Interest with an estimated receipts and disbursements schedule.

4 Reducing to Ownership

After the recommendation has been approved, the foreclosure, repossession or sequestration action or settlement agreement may proceed. The credit officer will:

a Authorize legal counsel to prepare and deliver the notice of default and demand for payment as required by the loan documents and applicable state law for the type of asset being taken.

b Authorize notification and posting of foreclosure sale, in the case of real property; or other similar action appropriate to the type of asset.

c Review the bid price to ensure its continuing appropriateness, and prepare and submit any resulting charge off requests.

d Attend or designate a representative of the Bank to accompany approved Bank counsel at the sale to bid on the Bank's behalf.

e Obtain evidence of title transfer, which in the case of real estate is a properly executed, file-stamped copy of the Trustee's Deed transferring ownership to the Bank.

f Within two business days of receiving title, the credit officer must:

1) Complete the documentation to transfer the asset to the assigned asset manager (see 04-EXH.033, OREO Management File Checklist and see 04-EXH.030, Establishing the Booking Price for Foreclosed Real Estate), and deliver it and all files relating to the asset.

2) Complete an IRS form 1099-A Worksheet (see 04-EXH.034) on each acquired asset and forward it to the asset manager to identify which transactions are subject to IRS reporting requirements regarding acquisition and abandonment of secured property.

3) When a deficiency is involved, process and transfer the fully charged off deficiency portion to Loan Recovery, using the completed Account Transfer form (see 04-EXH.040). This form should only be completed for deficiencies on loans currently being serviced in the SAB and are being transferred to SAB/Loan Recovery.

5 Deed-in-Lieu of Foreclosure

A deed in lieu of foreclosure is an alternative to foreclosure which involves voluntary conveyance of real estate collateral to the Bank by the debtor under specified terms. While this process can reduce litigation costs, speed up the transfer, and be useful when the property is the only means of recovery, the bank would become liable for all obligations associated with the property which were incurred prior to the transfer, including any junior liens. Due to the potential problems, deeds in lieu of foreclosure are only to be accepted upon receipt of an updated title report, advice of approved Bank counsel and approval of a Credit Strategy and Approval Officer. It is imperative that you retain the ability to foreclose the property if necessary to obtain clear title.

6 Reporting After Title Is Conveyed

Once the Bank has acquired an Asset, an Asset Review Change Request should be prepared to report the changed status of the acquired asset. The ARCR should be accompanied by the initial Asset Review Report on the acquired Pool Asset, and should be prepared by the asset manager, who should also review and revise, if appropriate, the previous Cash Flow Projection developed with respect to the asset based on the size of the transaction.

04-10.006 CHARGE OFF AND WRITE-DOWN OF POOL LOANS AND ASSETS

With the exception of charge-offs or write-downs associated with either full settlements on assets or shared national credits for which the Bank is agent, charge-offs and write-downs will be recommended in June and December of each year only. The credit officer is responsible for making a recommendation for charge-off or write-down, as further described below.

No borrowing customer shall be informed by the Bank that his loan has been charged off by the Bank.

1 Approval Requirements

To charge off or write-down all or a portion of a Pool Loan or Asset, the credit officer prepares an Asset Review Change Request (04-EXH.039) and forwards it for final approval to Credit Reporting and Forecasting.

2 Recoveries

Payments received from customers whose loans have been charged off will be applied as follows:

a Fully Charged Off Loans
All payments (principal or interest) received on loans which have been charged off entirely shall be applied first to the recovery of the charged-off amount, then to the interest due.

b Partially Charged Off Loans
Payments received on loans which are partially charged off shall be applied to the loans still on the Bank's books (principal and/or interest) and not the charged-off portion, unless there is adequate assurance that the debt remaining on the books and any accruing interest is fully protected with appropriate safety margins and the transaction is approved as an exception to policy.

3 Reinstatement of Charged Off Loans

Rebooking is permitted if the Bank can satisfactorily demonstrate that the quality of the charged off loan has improved significantly. Any reinstatement must be approved by the Senior Credit Policy Officer. The request for reinstatement must specifically note the improved conditions which served as the basis for that approval. The rebooked loan should:

a Meet the criteria used in granting new loans contained in the Bank's credit policy,

b Not be granted with a concessionary interest rate or on other more favorable terms than those which prevail for comparable borrowers in good credit, and

c Not be Criticized.

4 Liability of Customer for Charged Off Loans

Even though the Bank has made a decision to charge off a portion of a loan, the customer remains liable for the full amount of the principal and interest due and collection efforts should be directed to the full amount of the obligation.

5 Management of Charged Off Loans

The responsibility for all fully charged off commercial loans and all fully charged off consumer loans in excess of $100,000 is designated to the Loan Recovery area which will aggressively pursue fully charged off assets (loans) and other smaller but related "live" debts that may be assigned for exception servicing. The unit will be responsible for the negotiation, restructure and collection of such charged off assets with the intent of maximizing asset recovery, while minimizing expenses.

a Charge Offs to Be Serviced
Loan Recovery is responsible for the following contingent assets:

1) All fully charged off commercial credits of NCNB Texas' predecessor banks, and any active or charged off consumer loans that are related to such credit relationships.

2) All charged off consumer loans of $100,000 or more.

3) Any other Assets management determines are to be handled by Loan Recovery.

Consumer credit charge offs of less than $100,000 will be serviced by SAB Support.

b Transfers to Loan Recovery
Assets meeting the criteria above are to be transferred to Loan Recovery using a fully completed and approved transfer form (04-EXH.040). This form is to be used when SAB officers transfer fully charged-off loans to SAB Loan Recovery. However, only the net, legally collectible balance shall be transferred and is defined as the difference between the legally collectible balance less the bid or purchase price of the collateral. If, for example, the balance of a loan is $100,000 and the real property is bid at Trustees sale in the amount of $80,000, the balance transferred to Loan Recovery shall be $20,000 (regardless of the book value ascribed to the OREO). Officers should also advise Recovery of any legally collectible expenses maintained as "trackable" on the Credit Administration's "Expense Tracking System".

In certain cases, there may be an interim period following the charge off when the former officer may continue to service a customer relationship due to other ongoing business with the customer, or in those situations where the officer's expertise and followup are believed to enhance the probability of recovery. In those instances, however, accounting for the charge off must be handled by the Loan Recovery unit, and the credit officer must keep Loan Recovery informed of all transactions on the charged off asset. Such charge offs are to be reviewed regularly to ensure that full responsibility is transferred to Loan Recovery at the appropriate time.

c Management Reporting
Automated reporting will be provided to allow management to monitor the exercise of the respective authorities, the collection performance of Loan Recovery and other information necessary to comply with various reporting requirements.

d Judgments
Loan Recovery will take the actions necessary to:

1) Obtain judgments through the courts,

2) Continue such judgments, unless barred by formal proceedings approved by an appropriate court, and

3) Release the judgement when the account has been paid in full or settled in accordance with approved settlement agreements.

e Disposition of Assigned Assets
Assets assigned to Loan Recovery will be resolved in the following manner:

1) Modification of Contract Terms
Negotiate a payment program with the debtor resulting in the recovery or partial recovery of the charged off asset.

2) Transfer to Dormant Status
Assets transferred to dormant status must be approved with the authority of the Manager of

Other Impaired Asset Management & Loan Recovery and will include:

a) No Further Legal Remedies
An event has occurred which terminated the Bank's rights to pursue the debtor, including the following:

- i) Judicial proceedings discharged the obligation, i.e., bankruptcy, lender liability verdict.
- ii) The statute of limitations has expired.
- iii) Debt is forgiven in a settlement agreement.
- iv) Debt was eliminated through a foreclosure bid or sheriff's sale.

b) Bank Determination
A recommendation by Loan Recovery to discontinue collection efforts will be approved in those cases where:

- i) No future recovery is anticipated.
- ii) Estimated collection and other associated costs exceed the potential recovery.
- iii) A review of the facts surrounding the loss indicates that further action would be detrimental to the Bank.

f Use of Legal Counsel
Loan Recovery will coordinate the use of counsel with Special Counsel and may utilize inhouse as well as outside legal counsel to assist in the timely and efficient collection of assets assigned to the unit.

04-10.007 OTHER POOL ASSETS

1 Definitions

Other Pool Assets as defined in the Assistance Agreement consist of the following assets acquired by NCNB's predecessor banks or the Bank in satisfaction of an obligation through foreclosure, repossession, settlement or otherwise, and designated as Pool Assets:

a Other Impaired Assets
Personal property includes all assets other than real estate or interests related to real property.

b Other Real Estate
Real estate interests other than Owned or Leased Bank Premises include all real property, mineral rights, leasehold rights, condominium and cooperative interests in rights and development rights.

c Abandoned Bank Premises
Certain Owned Bank Premises will be identified by the Bank.

2 Servicing of Other Pool Assets

All Other Pool Assets are managed in the specifically designated areas stated below. All acquired assets are to be transferred promptly to the appropriate area of responsibility.

a Real estate is handled by the Asset Management Group (see also, OREO Administration Policy Manuals), and

b Abandoned bank premises will be handled in the manner prescribed by Credit Policy.

c All other acquired assets are handled in the Other Impaired Assets area.

3 Valuation Requirements

Any asset taken for debt must be recorded by a bank at its fair value as determined at the date of acquisition. The AICPA Industry Audit Guide for Audits of Banks provides the following definition:

Fair value is defined as the amount a seller can reasonably expect to receive in a current, but not a forced or liquidation, sale between a willing buyer and a willing seller and should be measured by market value if an active market exists.

a Determination of Book Value
Any asset acquired in satisfaction of debt is to be appraised in conformity with 04-08.003 and recorded as follows:

1) If the fair value is less than the previously related loan balance, this difference must be charged to the Bank's reserve for loan losses.

2) If the fair value exceeds the related loan balance, the asset may be recorded at the related loan balance plus (to the extent of fair value available) accrued interest on the loan through the date of transfer of ownership to the bank plus any allowable costs of asset acquisition. The booking of any significant costs of asset acquisition should be cleared through Credit Administration prior to actual recording.

3) If, within 90 days after the date the asset has been taken, additional facts (including comparable asset sales) indicate that the fair value is less than originally estimated, the difference between the asset carrying value and its revised fair value should also be charged against the Bank's reserve for loan losses.

4) Subsequent to 90 days after the date of acquisition, any further adjustments to reduce the asset carrying value should be charged either to the reserve for losses on Other Real Estate and Other Impaired Assets or, if no such reserve exists, as a Bank operating expense.

b Specific Guidelines for Other Impaired Assets

1) At least once every 12 months after acquisition, the fair value of all Other Impaired Assets must be objectively redetermined to ensure that the book value of each asset does not exceed its current fair value.

2) An independent, outside appraisal must be obtained to determine fair value at the times described above for all OIA which have a value in excess of $50,000.

c Specific Guidelines for Other Real Estate

1) Upon transfer of any real estate collateral to Other Real Estate, fair value must be substantiated by a current appraisal prepared by an independent, qualified appraiser.

2) If Other Real Estate is an unfinished construction or development project, further prudent advances to complete the project may be included in Other Real Estate. However, such additional advances may not be capitalized unless the Bank maintains on file evidence that the advances will result in a more salable property and are recoverable.

3) The following guidelines apply to National Banks:

a) The bank must obtain annually from an independent, qualified appraiser a current appraisal of fair value, or a certification, in letter form, that the fair value has not declined. The above requirements may be waived for loans that are the less $25,000.

b) A national bank shall not hold Other Real Estate for a period longer than five years. It is the intent of the Regulatory Ruling (Title 12 U.S.C. 29) that ORE be disposed of within the five-year period at a price sufficient to reimburse the bank for its investment and cost of acquisition. The five-year period begins on the date legal title to the property is obtained by the bank unless the property is held for future Bank expansion. The Comptroller of the Currency may approve the possession of ORE for a period longer than five years, but not to exceed an additional five years, if:

   i) The Bank has made a good faith attempt to dispose of the property within the five-year period, or

   ii) Disposal within the five-year period would be detrimental to the Bank.

4 Income Received from Assets Acquired in Satisfaction of Debt

Revenues and expenses associated with these assets may be recorded as revenues and expenses of the Bank (including depreciation or depletion of operating properties, as applicable) which may result in net income or a net loss. Therefore, Credit Administration should be consulted regarding proper accounting treatment for any asset having cash receipts or disbursements.

5 Sale of Other Pool Assets

The Bank intends to dispose of Pool Assets at the most opportune time at the most optimum price (approximate fair market value) possible. The asset must be sold in a commercially reasonable manner by whatever method of sale is typical for that type asset. When an item is sold on a bid basis, a minimum of three written bids should be obtained whenever possible. However, the Bank generally does not market items of personal property on a retail basis.

a Documentation
The Bank will retain evidence of its efforts to dispose of Pool Assets. Particularly, in the case of property other than real estate, efforts will be made to publicize the sale and attract potential purchasers. Copies of all advertisements of sales should be retained.

b Approval
The sale of an asset must be approved within specific authorities established for the sales price, terms and the amount of any resulting loss as set forth in Section IV.B.2. and 3. The approval documentation shall include:

1) The amount and terms of the proposal offer,

2) Any amounts charged off,

3) Information about any other offers or prospects, and

4) A Statement of Best Interest.

5) Purchaser's disclosure of NCNB/FDIC Employee Interest (04-EXH.014).

c Accounting
All financial transactions regarding Other Pool Assets must be processed through the asset manager assigned to the related asset.

d Prohibitions Upon NCNB Texas Employees
No employee of NCNB Texas or FDIC shall be permitted to purchase any asset, in any form, of the Special Assets Bank. To help insure compliance with this policy, the Asset Disclosure Form (04-EXH.014) must be completed on sales of all assets (OREO, OIA and loans) and incorporated into the appropriate credit file.

Further, no employee of NCNB Texas shall be eligible for any commission incentive involved in the sale of Other Real Estate Owned (OREO).

04-10.008 SPECIAL REPORTING REQUIREMENTS ON PROBLEM CREDITS

The term Non-Performing Assets includes Non-Accrual Loans, Other Real Estate, Other Impaired Assets, Reduced Rate Loans and Other Troubled Debt Restructurings, In Substance Foreclosures and Loans Made to Facilitate the Sale of Pool Assets. Guidelines concerning Non-Accrual Loans, Other Real Estate, and Other Impaired Assets have been set forth earlier in this Section. The guidelines below should be followed with respect to the other categories of non-performing assets. It is the responsibility of the credit officer to properly identify all such assets.

1 Reduced Rate Loans and Other Troubled Debt Restructurings

Regulatory authorities require that the Bank identify loans which are considered "troubled debt restructurings" (TDR). Loans which meet the policy definition of these type loans must be identified when the restructured terms have been legally executed and booked. Loans qualifying for this treatment are limited only to those where the following concessions were made as a result of economic or legal reasons related to a borrower's financial difficulties.

a Types of Troubled Debt Restructurings
Guidance on the identification of the two types of troubled debt restructurings is as follows:

1) Reduced Rate Loans
Loans where the interest rate has been reduced to one that is below interest rates normally available to credits of comparable risks on either the remaining term of an existing loan or in connection with a renewal. Interest rates that are equal to or greater than 90% of the average normal market rate for similar credits (including match funded transactions) would not be recorded as reduced rate loans.

2) TDR (Other)
This category involves only those loans where there has been forgiveness of any principal or accrued interest. The accrued interest forgiveness would not apply unless the amount forgiven is more than 5% of the interest owed.

b Effects of Classification
It is important to note that all restructurings **do not** meet this definition.

Loans involved in a Troubled Debt Restructuring must be identified for regulatory and stockholder reporting purposes; the TDR designation is made independently of a determination of whether a loan is "performing" or "not performing". A loan could be "performing" and still be a TDR.

Once a loan is considered a "TDR" (whether reduced rate or other TDR), it will remain so until a loan is either paid or assumed by an "unrelated third party", or until such time as the terms are substantially equivalent to terms on which loans with comparable risk are being made.

c Credit Officer Responsibilities
Any loan of $500,000 or more which appears to meet this definition should be discussed with the Credit Administration, which will verify the proper accounting treatment. Only those loans of $500,000 or greater should be reviewed for TDR treatment due to the materiality of the transaction.

2 In Substance Foreclosure

Loans which meet the SEC's definition of "in substance foreclosure" are to be reported when they are first identified.

a SEC Definition
The SEC considers collateral to be "in substance foreclosed" when:

1) The debtor has little or no equity in the collateral considering the current "fair value" of the collateral, and

2) Proceeds for repayment can be expected to come only from the operation or sale of the collateral, and

3) The debtor has either:

   a) formally or effectively abandoned control of the collateral to the creditor, or

   b) retained control of the collateral but it is doubtful that the debtor will be able to rebuild equity in the collateral or otherwise repay the loan in the foreseeable future (generally not more than five years).

b Qualifying Test
While a number of loans may meet the definition of "1)" or "2)" above, the critical test is "3)". The "3)" test revolves around whether the borrower is continuing to work on the problem and whether there will be something left for the borrower when the loan is concluded. The Bank's book value (not legal obligation of the borrower) normally will be used when testing the borrower's ability to "rebuild equity" which is determined by the existence of the following conditions:

1) The borrower will be able to dispose of the collateral at a value that will repay the book balance, and

2) The Bank will substantially settle the remaining legal obligation on some basis, and

3) There is a reasonable probability that the borrower will receive some equity in the final settlement, even though it may be small.

Refer to sub-paragraph 3.(a) below for further discussion.

c Determination Guidelines
The following general guidelines will be helpful in determining when collateral is "in substance foreclosed":

1) Normally, only those loans which are non-accrual should be considered for the "in substance foreclosure" designation, although in unique situations an accruing loan could qualify.

2) Normal "in substance foreclosure" classifications:

   a) The property has been abandoned by the debtor.

   b) Foreclosure actions are in process (posting or otherwise) and the Bank expects to receive the property during the next six months.

   c) The Bank expects to initiate foreclosure and there is little doubt that the action will be successful in the next six months.

3) Situations not considered an "in substance foreclosure":

   a) Although the loan is in very poor condition, the borrower is expected to reach a settlement or find investors or other financial strength which will result in a workout of the debt without foreclosure. The borrower will usually receive something for his effort.

b) Even though foreclosure proceedings are in process, the Bank does not expect to foreclose in the next six months as further negotiations are expected to result in a satisfactory debt arrangement for the future without foreclosure.

d Reporting Criteria
If a loan is classified an "in substance foreclosure", the collateral must then be reported in the same manner as ORE and OIA for accounting and appraisal purposes.

Only those loans of $500,000 and greater should be considered for "in substance foreclosure" due to materiality. For additional information, refer to 04-EXH.042.

3 Loans to Facilitate the Sale of Other Pool Assets

Any loan made to finance the sale of Other Real Estate or Other Impaired Assets may be required by regulatory guidelines to continue to be reported as a non-performing asset. Therefore, each loan of this type must be reviewed to determine whether it qualifies to be returned to performing status and the proper treatment of any necessary discount using the information in 04-EXH.042. The following guidance applies based on the type of asset being sold:

a Real Estate
Any loan funded to finance the sale of Other Real Estate must meet all of the following conditions in order to be carried as a performing asset. If all the conditions are not met, the loan must be treated as a "covered transaction" and its principal balance included as Other Real Estate Owned on any report filed pursuant to Call Report instructions for National Banks, as determined by the Comptroller of the Currency.

1) At least 10% of the total sales price must be paid to the Bank in cash or must be guaranteed to the Bank by private mortgage insurance or an equivalent guaranty.

2) The interest rate and payment program of the facilitating loan cannot be more favorable than is customarily available in the marketplace.

3) The facilitating loan must transfer from the Bank to the buyer of the asset the usual risks of ownership and all or most of the rewards of ownership.

4) Related to the above conditions, the following supplemental guidelines apply:

   a) If all the required conditions are met except for "(1)", the loan should initially be treated as a "covered transaction" pursuant to the guideline immediately above. Then, at some future date on which the sum of cash received at the time of sale, plus any portion of the principal which is insured, plus the aggregate of payments applied to principal since the time of sale exceeds 10% of the original total sales price, the loan is eligible for transfer to performing status. Payments on loans where the recoverability of the sales price is "reasonably assured" may be applied to principal and interest, otherwise where recovery of sales price is not reasonably assured or where a more conservative treatment is appropriate, the entire payment may optionally be applied to principal.

   b) If all the above conditions are met except for "(2)", and the interest rate on the loan is below market, then the principal balance of the loan should be discounted at the time of sale to an amount which would represent a market yield on the remaining book value, and the discounted book value transferred to performing status.

c) If conditions "(1)" and "(2)" are met but "(3)" is not, it is likely that the Bank will not be able to carry the loan in a performing asset status until it is fully paid. Therefore, care should be exercised to ensure that ownership risks and rewards are clearly transferred by the Bank at the time of sale.

While similar to the Comptroller's regulatory requirements in some instances, requirements under generally Accepted Accounting Principles (GAAP) are more comprehensive, especially in the area of down payment requirements on different types of properties. Therefore, when the amount of the loan made to facilitate the sale of Other Real Estate is $500,000 or more, the transaction must be discussed with Credit Administration which will consult with Controllers and outside auditors before the transaction is consummated and booked.

b Other Impaired Assets
Any loan made to facilitate the sale of these assets may be carried in a performing status if payment of principal and interest is reasonably assured.

Senate Committee on Banking, Housing and Urban Affairs

Supplement 'B' to Statement of
Timothy P. Hartman
Chairman, NCNB Texas National Bank

Washington, D.C.
September 13, 1990

NCNB TEXAS, A STATEWIDE BRANCHED BANK

NCNB has infused a substantial amount of capital into Texas. We have permanently invested $1.8 billion in the state as a capital base to instill public confidence and attract depositors. Customer deposits become loans to businesses and individuals that will sustain the recovery and re-establish Texas in the forefront of national commerce.

Our deposit base increased by over $5 billion in the five full quarters ended March 31, 1990. This represents growth of almost 25%.

As a result, NCNB Texas is lending more. But we and the other financial institutions need to increase the pace in order for the economy to achieve a satisfactory growth rate.

To begin to achieve our goals, we have organized lending both geographically and functionally. The information provided is in relation to the specific credit categories mentioned in the Chairman's invitation to testify.

The Southwest Corporate group looks to the region as a whole and considers credits to companies with annual sales in excess of $100 million, exclusive of energy and real estate entities.

General Banking manages the NCNB Texas branch structure. We maintain 254 branches, or banking centers, in 79 cities in 50 counties across the state. This branch network is separated into two main market areas -- the most urban counties and those which operate in more community bank environments.

Within General Banking, our Retail group operates in the major city markets of Austin (Travis County), Dallas (Dallas, Collin and Denton counties), Fort Worth (Tarrant County), Houston (Harris County) and San Antonio (Bexar County). Through the more than 183 branches in these five areas, this group delivers direct consumer, other individual and small business financial services and products.

Understanding the breadth of Texas, we know that our branches outside these largest counties must provide services from a community bank perspective. As a result, we have created a Community Bank group for these 72 branches in 44 counties. This group is responsible for all retail and commercial banking activity in their communities. Additionally, agricultural lending is being emphasized in these locations.

General Banking's Commercial group is statewide in scope and operates from core locations in the five largest cities. This unit works with Texas businesses with annual sales from $2 million to $100 million.

Our Retail group operates in the five major city markets of Austin, Dallas, Fort Worth, Houston and San Antonio. It handles direct consumer, other individual and small business lending.

NCNB Texas' real estate activities are an integral part of Specialized Lending, which also includes energy entities.

NCNB Texas Mortgage, a wholly owned subsidiary, represents our substantial statewide residential mortgage thrust.

Following is additional information concerning these groups, which offers information relative to our participation in the current Texas lending market.

SOUTHWEST CORPORATE & SPECIAL INDUSTRIES

The Southwest Corporate and Special Industries group serves domestically owned corporations in the Southwestern United States with annual sales of $100 million or greater, excluding dedicated energy and real estate entities. Approximately 1,700 companies in Texas fall into this category.

In addition, the group covers, on a national basis, certain special industries: commercial banks and thrifts; broadcasting, publishing and communications companies; insurance companies; and securities brokers and investment banks.

For the last several years, the Southwest group has established NCNB Texas as a significant leader in the Texas market, doing business with 44% of these companies in the state. It maintains the lead bank position (top 1 or 2) with 59% of our corporate customers. Also, 87% of our corporate customers identify NCNB as one of their top four banks.

NCNB is the major correspondent bank for more than 200 financial institutions in the state. Approximately 58% of the targeted financial institutions market in Texas are customers of NCNB, and 31% of those customers consider NCNB Texas their lead bank.

Approximately $600 million in loans are currently outstanding in the Texas market reflecting a more than 40% loan growth during the 18 months ended June 1990. Over the first four months of 1990, approximately $500 million in credit commitments have been extended to the Texas market. Our business activity reporting indicates that during this four-month period the demand at NCNB for credit in the Texas market has remained fairly constant with an average of approximately $400 million of potential credit commitments currently in process. We believe 65% of this work in process has at least a 50% probability of closing.

This lending activity is the result of our aggressive targeted marketing effort to solicit new loan demand. We made more than 4,000 marketing calls in 1989 and 1,850 calls to date this year, all focused on the Texas market. In addition to the general NCNB Texas advertising, a full-page newspaper ad was run in January aimed at the corporate market. The ad ran twice in each of the five major cities' newspapers and the southwestern edition of the Wall Street Journal. These efforts are part of our marketing strategy to demonstrate credit availability to stimulate economic growth in the state.

The Southwest group has a well-defined marketing strategy which includes specific goals to increase market penetration and expand the services used by customers. Business development programs, including detailed business reviews between the banking officers and their corporate customers or prospects, are focused on identification of economic opportunities for job creation, proactive support of business growth, and advisory services to assist the customer with shareholder value enhancement. Financing needs, identified through these programs, can be met through innovative credit products we currently offer or through new credit vehicles developed by specialists on the NCNB Texas team. Training programs for the lending officers emphasize technical development as well as teamwork. Senior and executive management actively participate in marketing. Officers are challenged to be active in their communities and sensitive to opportunities to stimulate business growth. It is our strategy to provide the customer/prospect a qualified financial consultant, supported by a team of experts, that can deliver prudent, affordable banking products to enhance the company's economic growth.

Even though competition from foreign agencies, out-of-state commercial banks and large local banks for high-quality credit business is strong, the perception in the market place that banks in Texas are unable to respond to the credit needs of corporate customers has been difficult to overcome. Recent publicity on regulatory actions such as HLT guidelines, examination results in the Northeast and Southeast, and national shared credit examinations has caused renewed concern and confusion in the market regarding credit availability. Also, lending officers are nervous about minimum acceptable underwriting standards that may change from one regulatory exam to another. NCNB Texas, as well as other financial institutions, may not participate in as many lending transactions, or at the same level as they might have in the past, due to the uncertainty of the credit reviews by national bank examiners.

GENERAL BANKING GROUP

General Banking provides high-quality, needs-driven financial products and services to individuals, not-for-profit institutions, and commercial enterprises with annual sales of less than $100 million.

General Banking has been aggressive in lending activities, having achieved a level of $3.4 billion as of May 1990. This has been accomplished despite the continued downward trend as reported by the Federal Reserve for annualized 3-month loan growth within the past year:

Total Loans	Total Market District 11	NCNB Texas
Spring 1990	- 5.3%	- 3.0%
Winter 1989	10.9%	17.6%
Fall 1989	- 1.3%	6.8%
Summer 1989	-10.8%	- 6.7%

These results have been achieved through a series of strategic actions over the past two years: rapidly expanding the branch delivery system, strengthening retail and commercial banking in the lead markets, developing a separate community banking capability, improving sales management and training, and re-emphasizing community involvement throughout the state.

EXPANDED BRANCH DELIVERY SYSTEM

Texas is the third most populous state, with 17 million inhabitants representing 6 million households. While geographically dispersed, the highest concentration of Texans, 9 million or 53%, live within the five lead markets of Austin, Dallas, Fort Worth, Houston and San Antonio.

Through a series of acquisitions and internal building programs, NCNB has added 131 offices in Texas since 1988. This has created a current network of 254 locations serving 50 of the 254 Texas counties -- 183 in the five lead markets and 71 in 46 other communities across the state.

For the past two years, NCNB Texas has concentrated on creating a single statewide banking network. This statewide consolidation effort is positioning NCNB to provide more efficient delivery of all its banking services, including credit extension.

RETAIL BANKING IN THE FIVE LEAD MARKETS

Within the five lead markets, the Retail Banking Group has responsibility for direct Consumer, Professional and Executive, and Small Business lending.

General types of direct Consumer loans include personal loans for auto, boat, recreational vehicles, home improvement, and student loans. In addition, expanded products are made available to Professional and Executive borrowers which include stand-by letters of credit, and loans for professional start-up and equipment. Small Business loans are made to companies with annual sales under $2 million and include short-term working capital loans, term loans for purchase or re-finance of rolling stock or equipment, leasehold improvement loans, start-up business loans, lines of credit, and stand-by letters of credit. Many of these same types of credits are provided supported by Small Business Administration guarantees where appropriate.

A primary emphasis in 1989-1990 is to increase the volume of consumer loan business throughout the Texas branch network. In 1989 we made $413 million in new personal installment loans. Through mid-May 1990, we made $173 million in new personal installment loans, which is a 22% increase over the same period of 1989. NCNB Texas has over 300 persons involved in lending or lending support to focus on retail banking needs.

Nevertheless, the consumer market in Texas is very fragmented. Normal automobile financing volume is being adversely affected by the aggressive special rates and/or rebate programs being offered by the major manufacturers. Furthermore, Texas state law prohibits offering home equity lines, which is the most expansive consumer product in the market today.

Overall, the Texas consumer has reacted cautiously to the fluctuations in the economy and has behaved in a conservative manner, particularly in recent months . As a result, consumer loan volume is not expanding and company-specific gains can only be achieved through market share increases.

At the same time, the small business market is a large and growing segment in Texas. There are more than 500,000 companies in Texas with annual sales of less than $2 million. The market is heavily dominated by very small companies; many are involved in high-turnover areas such as services and retail, especially restaurants. Major banks have traditionally not focused on this market segment, but NCNB Texas has structured several programs to service this market.

To concentrate our sales and marketing activities for attracting direct Consumer, Professional and Executive, and Small Business lending, the Retail Banking Group has undertaken the following actions: to understand the consumer and meet his needs, to offer competitive pricing, and to maintain a progressive lending posture.

Understand The Consumer And Meet His Needs

Direct Consumer Lending:

Provided a dedicated sales force to meet the needs of the mass market consumer.

Streamlined the credit approval process.

Developed programs designed to reach out to borrowers, many of whom had not previously been considered prime loan prospects, particularly Hispanic borrowers, as well as the lower economic market via the CRA program.

Conducted over 15,000 Customer Satisfaction surveys, both qualitative and quantitative, to ensure the bank is responsive to the needs of its retail customer base.

Expressed our commitment to the consumer through continuity advertising in the slogan "Banking From Your Point Of View". In practical application, this means that NCNB is willing to lend money to those who need it, and for the purpose that they need it.

Professional and Executive Lending:

Established a Professional and Executive lending sales force to support the differentiated borrowing needs of this important market segment.

Small Business Lending:

Developed a cross-referral training program to increase internal awareness about the credit needs of small business.

Introduced SBA lending program through 14 statewide locations.

Built a marketing and sales prospect information system.

Made over 10,000 business development calls on small- and minority-held business .

Spent over $3.5 million in advertising reaching minority communities.

Continued the "Business Banking" program in place at NBC using a dedicated sales force just to call on small businesses with over 10,000 business development calls per year in the San Antonio market. Annual credit originations for that unit are targeted at 40 million dollars.

Offer Competitive Pricing

We have aggressively sought new customers through the improvement of "relationship banking" which focuses on packaged pricing for deposit and loan products. In mid-1989, we introduced a new element to our Resource Banking product which offers special discounted rates on consumer credit.

In 1989, we also introduced special loan rate discounts offered through the "Affinity Banking Services" program, which generated over $70 million in referred new mortgage relocation and newcomer loans.

Maintain a Progressive Posture

Completed at least two major product promotions for the direct lending market. Additional promotion support has been given for special events such as boat and auto shows to attract new customers.

A high level of internal promotion support has been undertaken to attract consumers into our growing branch network and to develop a cadre of superior consumer lenders who will aggressively provide loans to new customers.

Increased the frequency of contact with non-loan households using direct-mail messages.

COMMERCIAL BANKING IN THE FIVE LEAD MARKETS

Within the five lead markets, the Commercial Banking group is responsible for providing lending services to public and privately owned businesses with sales sizes ranging between $2 and $100 million. This encompasses borrowers in all industries with primary emphasis on the wholesale, service and distribution sectors. Specialty lending areas are in place to handle small real estate transactions such as loans to small home builders, owner-occupied commercial real estate loans, and the commercial borrowing needs of automobile dealers for capital and floor plan loans. Asset-based lending is available from the commercial finance group, which is a market leader in Texas.

A broad array of financial products are available to commercial customers, including short- and long-term working capital credit, LCs, FX, equipment and plant expansion financing, merger and acquisition loans, cash management and corporate trust services.

NCNB Commercial banking has over 200 persons involved within the five lead markets in lending or lending support to focus on commercial banking needs. In 1990 we have developed special programs to generate new clients and increase credit use among existing customers:

Built a marketing and sales prospect information system.

Streamlined the credit approval process.

Sponsored and participated in city-wide business development conferences throughout Texas.

Established a program which projects over 15,000 business development calls in 1990, based on April YTD.

Established aggressive 1990 loan growth targets anticipating a 20% increase over the same period last year.

Despite our aggressive programs to expand commercial lending opportunities, the economic recovery of commercial businesses within Texas has been slow. Many well-qualified companies are reluctant to borrow funds in this period of economic uncertainty, and the number of funding sources has been contracting due to bank and S&L failures in Texas. Financial uncertainties have led to a re-training of a generation of both bankers and borrowers to the need for better financial information to be provided as part of the lending process, making some borrowers feel that banks are more restrictive in their lending practices.

COMMUNITY BANKING SUMMARY

Outside the five lead markets, the Community Banking Group is responsible for all Retail Banking and Commercial Banking activity. Additionally, a recently completed agribusiness lending policy will allow us to better serve additional segments of that market.

In 1989-1990 we have developed lending programs to generate new clients and increase credit use among existing customers:

Established a program which projects over 15,000 business development calls in 1990, based on April YTD.

Streamlined the credit approval process.

Implemented special loan promotion programs.

Developed a program to review credits that were transferred to FRMI (Special Loans) from prospects that have been rehabilitated and can be brought back into the operating bank.

Initiated an Agriculture lending program to support Agriculture lending activity.

Continued a localized Real Estate lending capability in community branches.

Developed a special rural homestead product and special small homestead loan product.

Nevertheless, economic recovery for local communities within Texas has been gradual. Bank failures in both urban and non-urban areas greatly affected the local economies and business development efforts. As has happened elsewhere, many well-qualified borrowers are reluctant to borrow funds during this period of economic uncertainty, and the need for additional financial reporting requirements have made some borrowers feel that banks are more restrictive in their lending practices.

IMPROVED SALES MANAGEMENT AND TRAINING

General Banking employs 4,000 individuals statewide. Over 20 percent of this workforce are dedicated entirely to providing credit services to Texans. Allocation of company human resources is constantly reevaluated to support our marketing sales orientation focus.

Internal processes have been improved to support the delivery of new loan business. Resources have been devoted toward development of sales training modules for consumer lenders and branch managers. A system to provide prospecting information is being designed, and an employee incentive-based-pay for generating loan activity has been implemented.

Continued emphasis in 1989-1990 has been placed on the upgrading of skills, motivation and responsibility of present personnel and on the recruitment of outstanding candidates for key managerial appointments in the future.

We trained more than 1,400 employees to become better Branch Managers, Consumer and Commercial Lenders, and have better skills in Credit Policy, Loan Documentation and Credit Scoring.

More than 2,500 employees have completed training in either Management Supervision, Management Development, or Executive Leadership.

EMPHASIS ON COMMUNITY INVOLVEMENT

NCNB desires to make a difference though community involvement beyond lending activities. Examples of community involvement activities are:

Texas Broadway Series
Cotton Bowl Parade/State Fair of Texas
Sponsored: "Thanks to Teachers"
Houston Ballet Program for Ninth Grade Students
Dallas & San Antonio Zoos
San Antonio Folk Life Festival
Waco Dr Pepper Museum Sponsor
Stephenville NCAA Division II Teachers Sponsor
Henderson Fish Fry
Midland Confederate Air Force Headquarters
El Paso Business Career Day Sponsor

NCNB TEXAS BRANCH DELIVERY SYSTEM
as of June 1990

TOTAL: 254 BRANCH LOCATIONS

Retail Branches:

Dallas & Collin Counties: 44 locations
Tarrant County : 17 locations
Harris County: 77 locations
Bexar County: 29 locations
Travis County: 16 locations

Community Branches:

East Texas District - 11 cities, 16 locations:
Chandler, Denison, Greenville, Hemphill, Henderson, Lindale, Lufkin, Mt. Pleasant, Paris, San Augustine, Tyler

Central Texas District - 12 cities, 17 locations:
Boerne, Clifton, Corsicana, Ennis, Hillsboro, Kerrville, Malakoff, Temple, San Marcos, Seguin, Uvalde, Waco

Midwest Texas District - 6 cities, 10 locations:
Abilene, Brownwood, Cleburne, Mineral Wells, Stephenville, Wichita Falls

West Texas District - 4 cities, 10 locations:
El Paso, Lubbock, Midland, Odessa

Gulf Coast District - 10 cities, 15 locations:
College Station, Beaumont, Conroe, Galveston, Nederland, Victoria, Corpus Christi, Texas City, Huntsville, Robstown

Rio Grande Valley District - 3 cities, 3 locations
Edinburg, Harlingen, Mission

REAL ESTATE GROUP

Commercial real estate activities in Texas have made some headway in the past year; however, despite very positive employment and personal income growth in 1989, particularly in Dallas/Fort Worth and Houston, the overall economy must improve significantly before the overhang of space is absorbed.

To cite some statistics, there are 85 million square feet of vacant office space in Texas' five major metropolitan areas. Houston stopped building offices five years ago, but there is more space available there than in any U.S. city outside of New York and Los Angeles. Average office vacancy is still in the 25 to 30 percent range.

Trends in multifamily rental markets and for sale housing, however, are much more positive across the state. Investors no longer redline Texas, and demand for well-located income properties has turned into a mini-stampede.

For two years running, Cushman and Wakefield's survey of CEOs named Dallas, Houston and San Antonio -- in that order -- as the cities most likely to show improving business conditions in the coming year. This means there is much reason for optimism, but the real estate turn-around will be gradual because markets have not improved to the point of justifying new construction. In fact, much current construction activity involves build to suit facilities for corporate customers.

NCNB Texas inherited a commercial real estate portfolio of over $6 billion in mid-1988 as a result of the First Republic acquisition. Of that total, over 90% were troubled assets transferred to NCNB's collecting bank and is indicative of the imperiled condition of the industry in the Southwest.

NCNB Texas' current Texas real estate commitments total $507 million. Over 60% of this portfolio is represented by single-family, residential multi-family and office projects. Less than 10% is in land or land development.

Given today's market conditions and what has transpired in Texas over the past 5 years, as well as the heightened influence of the OCC in the credit process, underwriting standards have tightened in all lending institutions. NCNB Texas is no exception.

Most new financing involves the acquisition of existing properties, and few deals will be done without substantial equity, institutional takeouts and/or high pre-leasing requirements. Additionally, more financial information is required from borrowers and guarantors. The result is a slower, more deliberate approval process.

Nevertheless, the financing of real estate is an important element in NCNB's overall business commitment to Texas. As evidence of this, we have built a team of 52 real estate professionals. Through the first seven months of 1990, NCNB Texas had closed $548 million for projects in the state. These range from a large office complex for IBM in Austin with Texas developer Prentiss Properties to low-income apartment projects in Temple and Arlington.

NCNB TEXAS MORTGAGE

While the housing demand is still considered down from the previous boom years of the early 1980s, our current Texas production volumes indicate that recovery is definitely taking place in pockets across the state.

The Houston metropolitan area is showing the most aggressive signs of recovery, as home prices and the demand for mortgage money have begun to increase. This area currently represents approximately 25% of our year-to-date retail fundings in Texas with an average loan amount of $128,710.

The Dallas/Fort Worth Metroplex is also beginning to show signs of an upward trend and represents approximately 19% of YTD retail fundings in the state, with an average loan amount of $145,553. While San Antonio, Austin, and some of the outlying markets continue to remain sluggish, our statewide production sourced through NCNB's network of banking centers represents approximately 48% of our total production with an average loan size of $102,407.

NCNB Texas Mortgage, a wholly owned subsidiary of NCNB Texas, is actively seeking to meet the demand for mortgage financing in Texas. We currently maintain a statewide 1-4 family portfolio of $1.9 billion comprised of $1.3 billion on our books and an additional $600 million originated in Texas and sold to the secondary market.

Prior to January 1989, each banking center throughout the state was able to originate its own mortgage loans. Since the mortgage company did not maintain the servicing for these loans, they were not reflected as a part of its total 1-4 family portfolio, making truly comparable historical numbers unavailable.

The availability of mortgage financing continues to meet current demands. They number of providers, however, has significantly decreased due to the failure of many savings and loan institutions and the resulting new restrictions. Many commercial banks have seen these events as an excellent opportunity to begin increasing their emphasis in the mortgage market and are beginning to promote that aspect of their total loan portfolio aggressively.

It is anticipated that commercial banks will continue to increase their total share of the mortgage market through the coming years and become even more competitive in the pricing and products they offer.

As one of the cornerstones of NCNB Texas' consumer strategy for 1990 and beyond, we are committed to meeting the needs of all of Texas -- from the major metropolitan areas to the smaller banking communities. In addition, we have targeted at least 5% of our total statewide retail production to meeting the needs of the low- to moderate-income borrower. By reducing some of the traditional barriers to home ownership, we are able to make qualifying for a home mortgage easier for this population segment. Simplified requirements include reduced down payments and closing costs, no minimum mortgage amount and the use of non-traditional sources of credit history and income.

NCNB Texas Mortgage is positioned for growth as is reflected in the 10-fold growth over the past two years of originations -- $130 million in 1988, $600 million in 1989, and a projected $1.2 billion in 1990. Our sales force in Texas has increased from 10 account executives in 1988 to our current force of 60, and a new telemarketing unit with a toll-free number has been developed to take applications by phone from customers calling from anywhere in the state. Through a wide array of products and services, competitive market pricing and an increased sales force, mortgage financing needs are met for a broad spectrum of borrowers.

COMMUNITY INVESTMENT PROGRAM

NCNB Texas is committed to meeting the needs of all Texans through a formal Community Investment Program which meets both the intent and spirit of the Community Reinvestment Act. Seven positions have been created to develop an organizational focus on community investment and outreach.

We have developed a residential mortgage product specifically tailored to advance affordable housing initiatives. The product features reduced fees and relaxed underwriting guidelines, eliminates the requirement for private mortgage insurance and utilizes creative approaches to income verification and credit history. At least 5% of all new mortgage loans originated in 1990 will be in low- to moderate-income areas. New mortgage loans in these areas are expected to total approximately $50 million in 1990.

Efforts to serve the small business community include a recently initiated statewide Small Business Administration Loan Guaranty Program and a $2 million capital investment in MESBIC Financial Corporation of Texas.

Consumer and small business education seminars are conducted in cooperation with various community-based organizations throughout the state, emphasizing information regarding banking services and the loan application process.

Our results in this regard have been positive. Extensive lending efforts in low- to moderate-income areas resulted in the extension of approximately $180 million in new consumer, small business and community development loans in 1989. Our Community Investment Program was named one of 10 Exemplary Initiatives in Affordable Housing nationwide by the Mortgage Bankers Association of America. And we were chosen by GE Capital Mortgage Insurance Company as the first lender in Texas to participate in a new mortgage insurance program specifically designed for low- and moderate-income consumers.

In addition, we are creating an in-house network of bilingual employees to assist in serving our multilingual markets. Our customer service unit has full Spanish language capabilities.

REQUIREMENTS FOR SPECIFIED LENDING AREAS OF NCNB TEXAS

CORPORATE LENDING REQUIREMENTS

♦ **Evaluation of borrower**

- Legal structure and ownership? (corporation, sub S corp., partnership, etc.). Subsidiary structure? (Which subs hold assets, are obligated for debt, produce cash flow, etc.)
- Understanding of industry risk factors and borrower's position in industry
- Management? (Experience, capabilities, depth, reputation)

Information is gained through interview, site tours as appropriate, reference checks and sometimes independent research.

♦ **Understanding purpose of loan**

- Working capital financing
- Capital asset financing
- Acquisition/changes in capital structure

Requires explanation and/or schedules as appropriate to fully explain transaction

♦ **Determination of financial strength and record**

- Evaluation of historic revenue, profitability and operating cash flow trends
- Evaluation of balance sheet strength:
  Capital adequacy, asset quality, asset turnover, liability structure

Requires at least three years' financial statements, usually audited. May require supplementary information.

- **Understanding and evaluation of repayment sources**
    - Primary source generally matches the loan purpose. (For example, a loan for seasonal working capital buildup is usually repaid from subsequent reduction of working capital.)
    - Generally look for at least one alternate repayment source
    - Sources of repayment include cash flow from future earnings, conversion of trading assets to cash, sale of assets, etc.

  Generally need to understand borrower's business plan and operating strategies. Longer-term sources of repayment require financial projections. Other information may be requested to evaluate risk to repayment sources.

- **Loan purpose, financial strength and available repayment sources determine most prudent loan structure**
    - Maturity
    - Revolving or non-revolving
    - Frequency and amount of payments
    - Whether a loan agreement is needed
    - Whether collateral or other support (such as guarantors) is needed to reduce risk

  If collateral is required, appraisals and/or additional information may be necessary to determine value.

CONSUMER LOAN REQUIREMENTS

◆ General types: Secured by automobiles, boats, recreational vehicles and certificates of deposit; unsecured personal loans, home improvement loans.

◆ **Information required**

- Consumer loan application -- information requested includes residence information; current employment status and history; present debt obligations, including credit cards; current deposit accounts and balances; and monthly income.
- Credit bureau report -- information sought includes number and history of past debts and accounts and number of inquiries within the last six months.

◆ **Financial participation**

- Amount of required participation or down payment varies from 0 to 35% of the cost or value of asset being purchased or being used as collateral. Amount depends mainly on type of collateral (eg. loan secured by NCNB Texas certificate of deposit requires no participation) and term of loan.

PROFESSIONAL AND EXECUTIVE LOAN REQUIREMENTS

- **General types:** Secured by stocks and bonds, upscale automobiles and single-family residential lots; unsecured lines of credit; stand-by lines of credit; loans for professional (medical practice) start-up and equipment loans.

- **Information required**

  - Complete financial statement or consumer loan application (requirement determined by size and type of loan, with more extensive requirements for professional practice start-up and equipment loans)

    Seeking same general information as indicated above, with more emphasis on net worth and contingent liabilities for larger loans

  - Income information -- W-2s, pay stubs, direct verification or copy of tax return. If self-employed, need most recent 2 years' tax returns.

  - Credit bureau report -- same information as sought above

- **Financial participation**

  - Amount of required participation or down payment varies from 0 to 50% of the cost or value of asset being purchased or being used as collateral. Amount depends mainly on type of collateral (eg. loan secured by NCNB Texas certificate of deposit requires no participation), term of loan, cash flow and overall financial strength of borrower.

SMALL BUSINESS LOAN REQUIREMENTS

- **General types:** Short-term working capital loans, secured by accounts receivable and inventory; term loans for purchase or refinance of rolling stock or equipment; leasehold improvement loans; start-up business loans, lines of credit and stand-by letters of credit, normally secured by stocks and bonds or certificates of deposit.

- **Information required**

  - Financial statements -- generally, three most recent financial statements, plus interim statement. Requirements slightly different based on size of loan and type of collateral, but generally require balance sheet, income and cash flow information. Current financial statement and three most recent tax returns for guarantor.

  - Credit history information -- evidence of proven payment performance and satisfactory deposit history, either at this bank or through verification with other financial institution. Verification of good payment history with trade.

- **Financial participation**

  - Amount of required participation or down payment varies from 0 to 50% of the cost or independently determined value of asset being purchased or being used as collateral. Amount depends mainly on type of collateral (eg. loan secured by NCNB Texas certificate of deposit requires no participation), term of loan, cash flow and overall financial strength of borrower and guarantor, if any.

HOME IMPROVEMENT LOAN REQUIREMENTS

- **Terms and credit criteria**

  - Generally secured by lien on the home with the amount based on the cost of planned improvements, equity in the home and the borrower's debt-to-income ratio.

  - Each loan request credit scored. Loan officer then receives appraisal of home at consumer's cost to determine amount of equity available if loan exceeds $25,000. For loans $25,000 and below, officer uses comparable sales in the local market to estimate equity. Generally, new loan plus any existing liens can't exceed 80% of home's total value.

  - Officer calculates debt-to-income ratio, which shouldn't exceed 37-40% of gross income. Applicant's credit score, prior credit history, estimated home equity and personal debt service capacity assist in decision.

- **Once loan is approved**

  - Borrower must furnish title policy if loan exceeds $25,000. If below that amount, a less expensive title history on the property must be furnished. Bank is named loss payee on the borrower's insurance, and a contractor's cost estimate must be provided.

COMMERCIAL LENDING REQUIREMENTS

- **Profile**
    - Commercial Lending provided to publicly and privately owned companies with annual sales from $2 MM to $100MM.
    - Broad array of products are offered, including short- and long-term working capital credit, lines of credit, equipment and plant expansion financing, merger and acquisition loans, cash management and corporate trust services.
    - Larger commercial customers use Investment Banking Group, mostly in areas of private debt placement and acquisition assistance.
- **Information required**
    - Reporting requirements vary from internal financials and/or tax returns to independently audited financial statement with projections and business plan, depending on borrower's ability to achieve an orderly debt repayment from recurring cash flow. Collateral coverage is not the prominent focus.
    - Asset-based lending -- provided to commercial borrowers NCNB Texas may otherwise be unable to serve due to unacceptable history of profitability, balance sheet weakness or rapid growth. Criteria based on collateral quality, control and liquidation value with secondary emphasis placed on financial reporting, cash flow and balance sheet.
- **Financial participation**
    - Hard asset financing generally requires borrower equity of 15-25%, depending on quality of credit.

In most commercial lending to privately owned businesses, the personal guarantee of the owner is required.

COMMERCIAL REAL ESTATE LENDING REQUIREMENTS

♦ **Guidelines**

- Proposed or existing improvements should be located in an area that can demonstrate market need. Key criteria includes existing rental rates, vacancy levels, absorption patterns, proposed construction levels and other market trends.

- Borrowers should show expertise necessary to construct, if necessary, and manage the property in order for value to be realized.

- Borrowers should provide financial information sufficient to exhibit their ability to support the proposed loan, as well as overall financial responsibility.

- Equity should be invested in the property sufficient to maximize the borrower's ability to pay off the loan as scheduled. This repayment can come from refinancing by a long-term lender or through regular scheduled principal amortization of the NCNB loan. Normally, this initial equity should not be less than 10% of the cost of the property as improved.

- Borrower should provide guaranties of the loan to ensure completion of the improvements and payment of the principal and interest.

- The loan amount should not exceed 75-80% of the value of the property as determined by an independent third party appraisal.

- Security interest for the property should be a first mortgage.

- Certain of these provisions can be relaxed when there is a prearranged sale or permanent financing available to the bank prior to funding.

RESIDENTIAL REAL ESTATE LENDING REQUIREMENTS

◆ **Guidelines**

- Lots to be developed should be located in an area with a need for housing. Key market criteria to be evaluated include inventory levels of new and previously owned homes; trends in sale prices; land available and zoned for development; construction in process; and availability of permanent mortgage funding.

- Borrowers should provide financial information sufficient to exhibit their ability to support the proposed loan, as well as overall financial responsibility.

- Equity should be invested in the property sufficient to maximize the borrower's ability to pay off the loan as scheduled from the sale of the lots or homes. Normally, this equity should not be less than 10% of the cost of the property as improved.

- Borrowers should provide guaranties of the loan to ensure completion of the improvements and payment of principal and interest.

- Loan amount should not exceed 75-80% of the value of the property as determined by an independent third party appraisal.

- Security interest for the property should be a first mortgage.

- Borrowers should demonstrate commitment to all federal, state and local housing laws. NCNB is committed to the provisions of the Community Reinvestment Act and to assisting in providing affordable housing to Texas residents.

TYPICAL MORTGAGE LOAN REQUIREMENTS

♦ **Guidelines**

- Analysis of borrowers includes their willingness to repay the debt as reflected in their credit history, qualifying ratios, employment stability and savings ability as reflected by cash reserves.
- Property is evaluated to establish the marketability and adequacy of value to secure the debt.
- To meet needs of low- to moderate-income borrowers, qualifications have been tailored to allow the use of non-traditional sources of income, smaller mortgage amounts, reduced down payments and larger contributions from municipal agencies.

NCNB Texas Loan Growth (1)
For the Period Ended March 31, 1990
($ in millions)

	Balances at March 31 (2)	Loan Growth Amount	Loan Growth Percent
Commercial loans (3)	$10,476	$1,770	17%
Consumer loans	2,081	617	46
Total loans	$12,557	$2,387	21

Loan Balances at January 1, 1989 (2)	$11,630
Transfers to Special Asset Division	(1,216)
Securitization of mortgage loans	(245)
Operating bank gross loan charge-offs	(53)
Loan purchases	2,104
Loans acquired in University Savings transaction	362
Loan sales	(2,412)
Loan growth	2,387
Loan balances at March 31, 1990 (2)	$12,557

(1) Loan growth is net of scheduled payments and has been adjusted to exclude transfers of troubled loans to the Special Asset Division (FRMI).

(2) Net of unearned income and loans in process of transfer to the Special Asset Division (FRMI).

(3) Includes commercial loans and leases, as well as, commercial real estate, residential real estate, construction and energy loans.

Senate Committee on Banking, Housing and Urban Affairs

Supplement 'C' to Statement of
Timothy P. Hartman
Chairman, NCNB Texas National Bank

Washington, D.C.
September 13, 1990

FINANCIAL RESOURCE MANAGEMENT, INC.

NCNB's collecting bank, now a separate, wholly owned subsidiary called Financial Resource Management, Inc., was formed in late 1988 to manage and collect the troubled loans of the former First Republic banks that were transferred to the bridge bank. The loans initially and subsequently transferred totaled more than $10 billion in book value. They constituted more than 11,000 separate assets with balances in excess of $100,000.

These troubled loans had been categorized through risk-rating guidelines established by the Comptroller of the Currency. The risk ratings were on a scale of 1 to 10, with 1 as the highest quality and 10 recognized as a loss. Only those identified as 9s and 10s -- the highest risks -- by a team of FDIC examiners, NCNB Credit Policy officers and independent auditors were placed in the collecting bank. These loans had a year-end 1988 book value of $9.3 billion and were marked down to then-current market value of $6.2 billion.

At the outset, our objectives, policies and procedures for our collecting bank were clearly stated in a formal servicing agreement with the FDIC. They are specified and printed in 12 volumes that are available to the Committee for review.

FRMI began to collect these troubled loans in late 1988. In the 20 months ended July 31, 1990, collections from sales of these assets totaled $3.7 billion. This represents 59% of the original estimated recoverable amount. Of this $3.7 billion, only $316 million was derived from the sale of real estate acquired, $620 million came from the sale of loans to lesser-developed countries and $2.6 billion came from a combination of loan payments through restructuring and borrower paybacks. Of significant note is the infrequent use of adversarial foreclosures in the resolution of troubled loans through July 1990. Our 1990 plan is to collect more than 40% of the year's beginning book balance of approximately $4.5 billion.

The 1,400 FRMI employees have been very productive in working with borrowers in collecting and restructuring loans as long as full financial disclosure is made. In these cases, collections or restructures can include partial debt forgiveness, restructuring of the remaining loan amount, or the signing of a deficiency note for the balance.

Our progress is attributable to the effective implementation of the FDIC-NCNB servicing agreements by our FRMI teammates. It provides for a FDIC oversight function that helps private sector initiative in the workout process. We believe that this FRMI oversight process should be considered by the RTC.

The model is very simple. FRMI personnel manage, and the FDIC oversees their actions, much as a board of directors would in a corporate environment. As a result, the FDIC has avoided micro-management, leaving FRMI management the authority to handle individual transactions up to $25 million. This covers more than 90% of all transactions.

It is worth emphasizing that to date FRMI has successfully restructured many loans based on the borrowers' ability to repay. This has expedited the resolution of troubled loans and avoided legal foreclosure costs and deterioration of property values.

The authority under our FDIC contract contrasts greatly with the interim servicing agreement we had with the RTC to manage the troubled loans of the former University Savings Association. Under the University agreement, we had authority to handle transactions only up to $100,000.

We believe NCNB's resolution of the First Republic troubled loan portfolio provides a model that offers guidelines for effective administration of many troubled loans now held by the RTC.

RTC ASSET DISPOSITION PRACTICES

The general goals of the RTC regarding asset disposition are "to achieve the expeditious sale of the portfolio of assets at the highest net present value in a manner that minimizes detrimental effects of such sales on local stock of low and moderate income properties."

Regardless of the resolution of the RTC troubled asset portfolio, it is important that adequate levels of owner equity be required in the financing of these properties to avoid a recurrence of the problem. The resolution of this troubled asset portfolio will be difficult due to the size of the portfolio, the uncertain timing of dispositions and the difficulty of obtaining financing. As a result, considerable downward pressures are likely to be exerted on real estate values.

We commend the RTC on its recent approval to sell assets in bulk to the private sector. This strategy will bring capital to depressed areas to support property values, reduce the administrative pressure and burden on the RTC and accommodate the RTC goal of minimizing the total cost of the thrift bailout. We encourage the implementation of this policy by the RTC.

FINANCING ECONOMIC RECOVERY IN TEXAS

Recapitalized and healthy financial institutions in Texas have the ability and a strong willingness to play a major role in financing the economic recovery of Texas. Their excess liquidity is a strong incentive to seek new loans to enhance earnings. The number of buyers or potential borrowers, however, who are willing or can invest a sufficient level of owner-equity into a purchase of RTC assets is limited.

Simultaneously, well-capitalized Texas financial institutions want to provide financing for sales by the RTC or other entities of assets held, or formerly held, by troubled financial institutions. Because of uncertainties in the market for real estate properties, however, lenders must require a substantial owner-equity investment and additional credit support by the buyer to make credit worthy loans.

Undoubtedly, this is frustrating for potential buyers of repossessed assets who expect local institutions to lend based upon a somewhat high percentage advance of the appraised value of the real estate being purchased. Real estate cash flows and market value uncertainties make this impractical today.

In order for lenders to accommodate the wishes of troubled-asset buyers for financing in any meaningful way, the RTC will need to stabilize the values and depth of market for real estate in troubled areas, or it will need to provide credit support to the transactions.

It is our understanding that the RTC is investigating a seller-financing program using private sector lenders to originate and service loans under RTC lending guidelines, policies and procedures. The lender would earn an origination fee and an appropriate interest spread, with the RTC bearing most of the credit risk of the buyer. Given the real estate market uncertainty, this program has merit, and we encourage the RTC strongly to continue the development and implementation through the private sector of this seller-financing program.

Memorandum

August 27, 1990
Houston

Bruce Robertson

Senate Banking Committee

Per Tim Hartman's scheduled appearance before the Senate Banking Committee, you have asked us to prepare responses to the questions addressed in Sen. Riegle's letter dated August 17. My response is as follows:

THE LOAN WORKOUT PROCESS

First, as Mr. Hartman has stated on numerous occasions, foreclosure continues to be a last resort. Our experience has shown that invariably, we maximize value by working with troubled borrowers. Second, we do not, in our view, ask our borrowers to do things they're incapable of doing. We do, however, ask them to do all they can. Third, the most critical element in our ability to maximize value is our professional staff - their training, their experience, and their motivation.

Commercial Loans

Before discussing the process for collecting cash from troubled commercial real estate loans, it may be useful to review some of the characteristics of the RTC portfolio we're most familiar with - University Savings. As of the date we began managing the assets (October 13, 1989) the real estate "loan" portfolio consisted of approximately $1.2Bn in loans, and $550MM in direct investments in real estate development joint ventures. This portfolio is approximately 40% land, and 60% income producing, with the income producing concentrated in multifamily housing. Additionally, based on the appraisals we've conducted to date, the current value of the land is about one-third of the associated loan balances, while the value of the income property is in the range of two-thirds of the loan amounts.

The techniques we use to manage and collect these loans fall into three general categories: restructure of the existing debt; refinancing by another lender or investor; or sale of the property. Each case is evaluated according to its unique circumstances. If a borrower has the ability to pay something, or has additional assets to pledge, we will consider rate reductions and interest and/or principal deferrals in order to give the borrower time to return to full performing status, or find a buyer or a source of refinancing for the asset at or near its market value. Once a buyer or a source of refinancing is found, we deal with any remaining debt based on the borrower's ability to pay. If a borrower cannot or will not contribute, however, we see no reason to avoid foreclosure.

On the income producing segment of the portfolio, many of the loans we deal with at University were done with recourse only to the property (non-recourse to the borrower). An example would be a loan to a limited partnership for the purchase of an apartment complex. We have been very successful at working with borrowers to find buyers, investors, and refinancing for the current value of the property. In cases where property like this goes to foreclosure, it is generally because the owner/owners are not willing to sell the property, find an investor, or contribute additional funds to service the debt (An unwillingness to sell is sometimes driven by the desire to avoid the tax consequences of a sale, while the unwillingness of many partnership investors to invest additional funds is often due to debt in excess of the current value of the property).

There are several complicating factors when dealing with land loans. One, of course, is that undeveloped land does not in general produce income. Land loans have to be carried by a borrower's other activities or resources, and our experience has shown that by the time a land loan becomes delinquent, there is not much to recover from the borrower. Another is that buyers for land remain scarce, making a workout structured around a sale of the property less likely.

Our efforts to collect the joint ventures are complicated by the fact that the defunct institution, in addition to providing financing, was also typically a 50% owner. We have been successful, though, in negotiating with the venture partners to sell the assets in the ventures, or to allow the receivership to assume full ownership of the assets, in return for negotiated settlements of claims we've asserted under the terms of the documents and certain provisions of partnership law.

As to time frames, an uncomplicated case in which we have current appraisals could take as little as two weeks. A more complicated case, possibly involving a bankruptcy, could take in excess of a year. A good measure of the time involved, though, is that we have collected over 20% of the estimated total amount collectible from the University portfolio in a ten month period. For the record, our progress to date, while substantial, is in addition to a significant amount of organizational and "housekeeping" work we had to do on the front end.

Consumer Loans

On the consumer side, we are currently managing approximately 17,000 one to four family residential mortgages for the RTC. These are loans which were not considered for purchase by NCNB Texas because, while most continue to pay, each had one or more characteristics which make it unattractive. Examples are loans which have been modified due to borrower hardship and carry a below-market rate, loans with balances significantly in excess of collateral values, and loans whose original underwriting did not meet accepted industry norms.

As noted above, we consider foreclosure a last resort. As evidence, consider that on average, 590 of these loans are past due 30 days or more at the end of each month. As a result of our efforts to work with borrowers to "save" the loans, only 43, or 7%, end up being posted for foreclosure.

The techniques used to maximize value and avoid foreclosure, in all cases, are tailored to fit each borrower's circumstances and his or her ability to pay. They include lowering the interest rate, extending the term of the loan to lower principal payments, principal moratoriums, and spreading past due amounts over future payments. We also make creative use of assumptions by more qualified purchasers, and in some cases of extreme hardship, debt reductions or forgiveness. We have found that, with our cooperation, a troubled borrower can often find a purchaser for his or her home at a price far in excess of its foreclosure value if we make the loan assumable. In these cases, any remaining loan balance is the subject of an agreed-upon repayment plan, possibly including debt forgiveness, keyed to the borrower's ability to pay.

The time frames involved for a typical workout on the residential side range from 60 to 90 days, although a significant amount of our work involves repeat customers. A bankruptcy filing delays the process by another 60 to 120 days.

Maximizing Value

In addition to the factors noted above, we make sure we maximize value through careful control of the process by which these workouts are approved. The specific facts and circumstances of each case are evaluated in writing, as well as each borrower's (and/or guarantor's) financial condition. The information required and the analysis performed are done to standards set by NCNB Texas, and each case includes a numeric present-value comparison of the available courses of action. Each case requires the approval of at least one level of management, and most are presented to a committee made up of our most senior people.

Ed Hurley

Ed Hurley

Memorandum

Credit Policy
Houston
August 28, 1990

Richard B. LaSance

Information for Senate Banking Committee Testimony

Issue No. 1 in Senator Riegle's August 17 letter to Tim Hartman asks, in part, "what techniques you use to ensure you obtain maximum net present value." I would like to provide a two-part response to this:

1. Preparation of Asset Review Reports (ARRs) and Cash Flow Projections.

   An ARR is prepared on each individual asset of any significance. In addition to providing certain basic information regarding the nature of the asset, its value, background information and current status, a collection or disposition strategy - i.e., what is perceived to be the optimum strategy among the available alternatives - is recommended. This recommended strategy is the blueprint for achieving the maximum conversion to cash on a net present value basis, taking into consideration all the risks inherent in that particular strategy vis-a-vis the other available options.

   The Cash Flow Grid, which is a projection of all income derived from a particular asset over its assumed life in the portfolio and all associated or asset-related expenses, is a companion document that reflects the anticipated economic results if the recommended strategy is approved and pursued. The Cash Flow Grid is supported by an explanation of the assumptions that were utilized to determine the income and expense items. The ARR and Cash Flow Grid is reviewed in detail at several levels and approved by senior management prior to implementation.

   Prior to engaging in the ARR exercise on an asset-by-asset basis described above, macro strategies are developed by asset type. These strategies take into consideration such factors as existing economic conditions and the market for a particular product, economic forecasts, geographical considerations, concentrations by asset type within the portfolio, etc. Once a generic strategy by asset type is determined and approved, then strategies for individual assets are formulated within the parameters established for their respective asset types.

2. "Statement of Best Interest."

   Each case presentation includes a narrative discussion known as a "Statement of Best Interest" to support the action which is being recommended on a given asset. The concept behind the "Statement of Best Interest" is that all available alternatives are discussed and quantified, to the extent possible, so that the optimum course of action is set. For example, the available options on a loan in default might be refinancing with a third party, restructuring the debt, or demanding payment and pursuing foreclosure remedies. The foreclosure option needs to be analyzed in the context of the potential for bankruptcy and the costs associated therewith compared to the other alternatives. By careful consideration of all available alternatives and the resultant elimination of those that are either unworkable or are economically infeasible, direction and focus is established for the efficient collection or disposition of the asset.

Insofar as maximizing the collection effort is concerned, there is a direct relationship between the point in time at which a thrift institution fails and when its assets are placed in the hands of a qualified contractor under a permanent or long term contractual arrangement.

Bruce Robertson

Bruce Robertson
(713) 596-5010

CBR:rb

Attachment

Memorandum

Special Asset Bank/University
Commercial Real Estate Lending/Houston
August 28, 1990

Ed Hurley

Response to Senate Banking Inquiry Addressed to Timothy Hartman

Question: Are depository institutions willing to make loans, pursuant to their own safe and sound underwriting guidelines, secured by Texas real estate?

I believe that the key words within this question are "pursuant to their own safe and sound guidelines". Given this qualifier, I consider that the answer is Yes.

However, banks and savings institutions have tightened their lending policies in general, and more specifically in real estate, based on stricter interpretation and enforcement of credit policy guidelines by the examiners and to a lesser extent the uncertainty in the overall marketplace, new capital requirements mandated by the regulators, and the difficulty financial institutions have in raising new capital to satisfy those requirements. Subject to these new underwriting conditions, banks are willing to make loans on Texas real estate.

"Safe and sound" underwriting guidelines generally require significant owner equity in order to induce the bank to lend on any real estate project. Typically these guidelines are as follows:

1. First, raw land financing has virtually been excluded from the product list for most institutions. NCNB, like most other banking institutions, have underwriting guidelines requiring loan ratios for land to be 50% or less of appraised value. And even then, the buyer must have a use in mind in the immediate future in order to induce the bank to fund the loan.
2. Medium term financing (three to five years) for income producing properties can be obtained based on a stable cash flow stream that is in place prior to the loan being made and a loan to value of 75% or less.
3. Environmental studies are an industry standard and most institutions will not put a loan on the books whose collateral is impacted by any environmental concerns unless the borrower has provided the dollars for remediation.
4. Guaranties are required from the corporate entity or

> individual requesting the loan. If a syndication group is the purchasing party and no guaranties are available, the loan will require even stiffer underwriting than otherwise would occur.

These guidelines impact the RTC's attempts to dispose of significant volumes of real estate assets by excluding from the potential market those interested buyers without access to the cash necessary to secure a loan under acceptable lending criteria.

Your discussion relating to NCNB's (and other institutions') efforts to liquidate non-liquid real estate portfolios explains the problem. Foreclosure is not occurring when any other solution to the loan problem is available - restructuring, refinancing by another lender for the existing borrower, or sale of the underlying collateral at its appraised value and settlement of any deficiency. This suggests that the bulk of the RTC's foreclosed assets do not possess characteristics sufficient to entice financing and/or sufficient risk capital from investors - at least without significant discounts to appraised values.

Our experience, however, does indicate that bank financing in the range of 60% to 80% of the purchase price (including rehab costs) is available for Class A and B multi-family projects. Even Class C multifamily properties can be financed if the reason for the latter classification is the maintenance level of the project which can be corrected through rehabilitation. Without even greater equity infusions, other income property types owned by the RTC cannot be refinanced by a purchaser through bank financing because of the lack of an adequate income stream to support debt service.

The sales activity occurring on land assets is almost entirely related to "user" buyers - a buyer who has a personal use for the property he is acquiring. These users can typically get bank financing or have the ability to purchase out of cash reserves. But in depressed markets user activity is extremely limited and even less sales activity is occurring on non-user properties of a more speculative nature. Some of this lack of interest in non-user land tracts is directly related to the strict financing requirements placed on buyers. Approximately 70% of the number of RTC land assets in the University Savings' portfolio fall into the non-user category representing 50% of the overall value of the portfolio. Sales interest in these assets could be enhanced with financing options provided by the RTC.

With the strong emphasis Texas banking institutions are placing on the consumer business, home buyers are not having a problem placing mortgages necessary to purchase RTC owned single family assets for cash.

In conclusion, financial institutions are willing to make loans secured by Texas real estate. However, the underwriting guidelines are such that many of the assets owned by the RTC will not qualify without significant cash equity required to which many interested buyers do not have access. The RTC should consider the possibility of financing or otherwise credit enhancing a portion of the purchase price of specific types of assets in order to expand the market of available and interested buyers for its product and, thereby, experience the sales volumes it desires as well as reductions in carrying costs otherwise required for the repossessed properties. Specifically, financing should be considered for land and poorly located income properties incapable of producing a cash flow to support the current appraised value.

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Memorandum

Asset Management
UFSA/SAB-Houston
August 28, 1990

Bruce Robertson

Responses to Senator Riegle's letter to Mr. Hartman

Techniques to Maximize NPV -Loan Workout and Foreclosed Real Estate Assets

The use of the term "workout" clearly identifies the fact that serious impediments exist to the collection of a loan secured by real estate collateral. The final scenario, after all other options have been pursued in workout situations, typically involves taking possession of the collateral through the foreclosure process. That process may be "friendly", in which the borrower cooperates in arriving at an overall settlement, or at least does not oppose the foreclosure action, or adversarial, which typically involves litigation or bankruptcy, or both.

In any case, when taking possession of the collateral is unavoidable, maximizing the value of the now-owned real estate involves the exercise of professional property management skills which augment efforts to sell the owned real estate asset at the best possible price. Appropriate techniques, where cost/benefit analysis indicates a clear and present monetary benefit, involve remedial action to halt and reverse negative trends which have developed with respect to the property during the workout period. Improved properties must be secured, inventoried, competent property management engaged, repair and operating budgets established, reviewed, and approved in the context of a strategic marketing plan which is developed based upon a detailed knowledge of the property's surrounding market conditions and trends.

The process is similar with respect to unimproved properties, but management decisions made as to land planning, zoning, permitting, and use have far-reaching implications for the value of the property to a purchaser. The importance of engaging the most competent available assistance in asset management, property management, leasing, and marketing cannot be over emphasized.

Other Concerns

Affordable Housing

The Affordable Housing Clearinghouse processes, particularly with respect to multi-family properties, should be expedited wherever possible. Present favorable markets for such properties should be engaged at the earliest opportunity in order to maximize disposition values.

Lending Markets

Due to the speculative nature of raw land investments which may require years to mature into developable, saleable parcels, financing from institutional lenders is all but unavailable, not only in Texas, but nationally. The RTC may wish to consider making traditional, non-liability, longer term investor type financing available to encourage responsible investors, for a nominal down payment, to assume an owner's role with respect to the RTC's more promising land holdings. Further, once an instrument has been generated from such a sale, it may usually be sold for cash more readily than the underlying real estate collateral.

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The CHAIRMAN. Very good. thank you very much.

Ms. Gonzalez, I'm going to call on Senator D'Amato, who has been kind enough to indicate that he can remain here. But I must go shortly.

Senator D'Amato, let me invite you to make any opening comment and we'll go to Ms. Gonzalez.

Senator D'AMATO. Well, Mr. Chairman, I'm just going to ask permission to submit a statement as if read in its entirety so we can hear Ms. Gonzalez.

The CHAIRMAN. Very good. Thank you.

Before I leave, I have statements for the record from Senators Dixon, Sanford, Kerry, and Garn.

STATEMENT OF SENATOR ALFONSE M. D'AMATO

Good morning, Mr. Chairman. Thank you for convening this hearing today to discuss the Resolution Trust Corporation's progress in meeting its asset disposition and affordable housing goals. I am pleased to welcome our distinguished witnesses, and I am eager to hear their testimony on these important aspects of the S&L crisis.

We have several witnesses who are scheduled to testify today, so I will be brief in my opening remarks.

I wish to say at the outset that the RTC has an enormous responsibility in the prompt and intelligent disposition of assets from failed savings and loans. I know and appreciate the scope of the RTC's task in that regard.

Accurately assessing the RTC's progress in asset disposition is important not only to this Senator and this committee, but to the American taxpayers most of all, they have a right to insist that the assets of failed savings and loans are disposed of in a manner that minimizes additional public cost. In the process of asset disposition, pace is crucial, but so is price and sound business judgment.

Additionally, the mission of RTC's affordable housing program is a vital one, and it is essential that RTC work in a constructive way with state and local entities to accomplish the affordable housing goals set forth in FIRREA. What difficulties may exist in RTC's aforable housing program require thorough review so that effective remedies can be identified quickly. I look forward to hearing testimony concerning RTC's affordable housing activity from today's witnesses.

STATEMENT OF SENATOR ALAN J. DIXON

Mr. Chairman, I am pleased to be here this morning as the Senate Banking Committee continues its oversight of the Resolution Trust Corporation [RTC]. I applaud the chairman for scheduling this hearing to focus on the problem of asset sales. The three previous oversight hearings, necessarily, had such a broad scope that I believe we did not focus adequately on the RTC's asset disposition program and record.

I look forward to hearing from the RTC staff and the private sector witnesses here today.

Last may I said that the pace of thrift resolutions and asset dispositions has been disappointing, to say the least. Since then, asset sales have increased significantly. I am eager to hear of any progress the RTC has made.

Still, it is my understanding that the increase in asset sales represents overwhelmingly increases in sales of only the easily marketable assets. If we look behind the aggregate statistics to the troublesome receivership real estate, only $248 million out of a portfolio of $6.3 billion was solid as of June 30, 1990. Does this mean that the RTC still does not have adequate personnel and procedures in place to dispose of receivership assets? Is the problem with the RTC or with the market? What can be done to improve the situation?

Asset sales are the toughest part of the RTC's task, will take the longest to resolve, and will most significantly affect the total cost to the taxpayers. Congressional oversight is vitally important. I would also like to know whether any congressional action is needed.

Thank you, Mr. Chairman.

OPENING STATEMENT OF SENATOR TERRY SANFORD

Thank you, Mr. Chairman. I appreciate your efforts in scheduling this hearing and thank our witnesses for their informative testimony. I especially want to welcome Tim Hartman to the Banking Committee. While Tim is now chairman of NCNB-Texas, we in North Carolina still like to claim him as one of our fine constituents. Tim has taken over the reins at NCNB-Texas under extraordinary circumstances and has done an excellent job of positioning NCNB to serve the banking needs of Texas. The institution has also been a major buyer of failed thrifts. As such, Tim has considerable experience working with the RTC, OTS and the FDIC and I know my colleagues will benefit from his insights into the RTC asset disposition process.

This morning's hearing focuses on a crucial topic—the disposition of assets taken over by the RTC as a result of thrift failures. I have for some time been troubled that the disposition process appears to be taking far too long while the toughest-to-sell assets remain in the RTC's portfolio. Clearly we cannot permit the Government to become the largest property manager in the world. These assets can and must be sold.

Yet the RTC faces a difficult mandate to, on the one hand, sell assets as quickly as possible, and on the other hand, make sure that their actions do not unduly depress real estate values in the markets in which the assets are located. Negotiating its way between these goals is not an easy task. I am encouraged to see the RTC move in the direction of holding a large auction for many large properties and hope similar efforts to move properties along will be taken.

I also think the RTC, the OTS and the FDIC need to take greater account of the facts noted in Mr. Hartman and others testimony, namely that only a very small percentage of the total assets taken over from failed thrifts are actual real estate properties, Other Real Estate Owned or OREO as the bankers call it. The vast majority of assets of these thrifts consists of loans, which may or may not be collateralized by real estate. The cheapest way to deal with that kind of an asset mix may very well be to renegotiate these loans, not to foreclose on them. However, the ability to do that depends on quick action, as the longer the loans sit outstanding, the harder it becomes to find the borrower and to persuade the borrower to restructure his or her loan commitment. I hope that as the RTC and the OTS gear up their new programs, actions can be taken in a timely enough way to permit the orderly restucturing of individual loans.

Again, I think the RTC has most of its crucial work ahead of it. I appreciate the testimony of our witnesses this morning to inform us of how that work is proceeding. I look forward to the opportunity to explore a number of issues with our witnesses.

STATEMENT OF SENATOR JOHN F. KERRY

I'd like to thank the Chairman of the committee for holding this important hearing today. This has been a very busy week for the committee—this is the fourth hearing in 4 days—and I want to commend the Chairman and the staff of the committee for their hard work.

I also want to commend the Chairman for his swift action in drafting legislation to authorize the Federal Deposit Insurance Corporation to increase deposit insurance premiums in order to protect the Bank Insurance Fund. The testimony that this committee has received this week about the fragility of the insurance fund is very disturbing and I hope the Congress as a whole will move quickly to enact preventative legislation.

As I noted during the hearing on Tuesday the Middle East crisis is eclipsing most other issues these days, but the management of the savings and loan crisis continues to merit close oversight, and the subject today—asset disposition by the Resolution Trust Corporation—is extremely important in order to keep the extraordinary cost of this fiasco from going any higher.

The RTC is clearly walking a fine line in the disposition of the assets under its control: The RTC currently controls thousands of properties and hundreds of billions of dollars worth of assets. It must move those assets from the Government and back into the private sector.

The question is how fast should the RTC move the assets and how much a discount should it offer?

I know many experts believe that holding onto a multi-billion dollar inventory of single family homes, undeveloped land, partly completed apartment complexes and vacant office buildings, may prove to be extremely costly for the Government, as much as 20 percent of its total value a year. Or calculated another way: an added cost to the taxpayer of almost $250 million a month or almost $9 million a day.

I know Mr. Kelly has been quoted as saying that "* * * if you can get eighty cents on the dollar now, it's worth selling it."

I am generally in agreement with that view but I want to warn against the kind of dealmaking mentality—sell at any cost—that permeating the last days of 1988 when the Government sold off 80 failed savings and loan associations at a cost to the taxpayer of perhaps $70 billion over the next decade.

I want to know how we avoid situations—such as one I read about recently in the Boston Globe—where a Japanese consortium bought a Dallas development for $60 million even though the property has been valued at $330 million.

This is the kind of deal that makes the American public furious and rightly so.

Two nights ago President Bush came before Congress and the American people to discuss the Middle East crisis. In his address, he warned "let no one even contemplate profiteering from this crisis."

I think to a certain degree we need to adopt that policy when we sell the assets of the RTC. Obviously, we need to move the assets and we can only do that by offering the possibility for future profits. But we need to prevent the kind of naked greed—greed that placed the thrift industry into this crisis in the first place—from playing a part in this process to asset disposition. We need to prevent greedy profiteers from ripping off the American people.

I think we have an excellent panel today and I look forward to hearing from them.

STATEMENT OF SENATOR JAKE GARN

The committe has assembled before us today the finalists in the competition for toughest job in Washington. I commend them for their efforts and their willingness to clean up the residue of some of the worst lending practices in history.

As is the case with any task of this sort, the easiest part gets done first. The RTC has shown substantial success in the disposition of the liquid assets. I believe that somewhere in the neighborhood of $80 billion in assets have been disposed of to date. The less attractive assets remain in the RTC inventory.

I must express some dismay that at least some of my fears regarding the asset disposition process are being realized. With the exception of the disposition of highly liquid financial assets, only a small fraction of RTC assets have been disposed of. There are many plans and programs, regulations and announcements, but few bites have been taken out of this elephant. Mr. Kelly's report on "Asset Sales in Receiverships," for example, contains phrases like, "recently given us approval to begin" * * * "developed a sales program" * * * "the RTC is soliciting" * * * "the RTC will analyze all disposition options" * * * "the RTC is also seeking". It is hard to find statements like, "The RTC has sold," or "the RTC has disposed of". I must remind you that until some version of these latter two statements can be made, all the "soliciting," "seeking," "developing," and "receiving approval to begin" is meaningless, other than the harsh reality that as an excuse or reason for delay it is imposing a tremendous cost on the taxpayer.

I continue to believe that the RTC will find more success by turning over the asset disposition effort, as much as possible, to the private sector instead of leaving it to people in government who lack incentive, experience, and market discipline to deal with these assets in the most economic fashion.

There is one more step that we can taken here in the Congress, before we adjourn and leave the country at rest, that will make your job easier. I continue to hear reports of reluctance on the part of acquirers of failed thrifts to take on the real estate owned by the failed institutions. One of the reasons, I am told, for that reluctance is the fact that the acquirer has no idea what potential liabilities he may be acquiring along with these real estate assets. The potentially greatest of these is the threat of environmental impact liabilities.

I firmly believe that Congress could ultimately save billions in costs to the RTC if my lender liability bill, or something like it, were enacted by Congress this year. It certainly would make the RTC's job easier if they had fewer real estate assets to deal with, if the acquirers of failed thrifts would take a larger portion of the assets, even if they take them at a discount. As it now stands, these acquirers are uncomfortable with taking any of the real estate assets, at any discount. We can do something to rectify that. It would seem to me to be irresponsible not to pass this legislation, supported by FDIC Chairman Seidman, and I believe supported by the taxpayers who will have to pay less to clean up this problem if my bill is enacted.

I look forward to hearing the views of these witnesses on these matters.

STATEMENT OF TISH GONZALEZ, EXECUTIVE ADMINISTRATOR, TEXAS HOUSING AGENCY, AUSTIN, TX

Ms. GONZALEZ. Thank you very much, Mr. Chairman.

I appreciate the opportunity to be here this morning on behalf of the National Council of State Housing Agencies, or NCSHA.

Senator D'AMATO [presiding]. Take it easy. [Laughter.]

I know the time constraints.

Ms. GONZALEZ. Right.

Senator D'AMATO. But my gosh, they'll have you read that thing right off the page. So slow down a little bit.

Ms. GONZALEZ. OK.

Senator D'AMATO. Go ahead, Ms. Gonzalez.

Ms. GONZALEZ. NCSHA representing housing finance agencies of the 50 States and we appreciate this opportunity to comment on the activities of the RTC in carrying out its affordable housing responsibilities as mandated by Congress.

We do commend the RTC and its Oversight Board staff, particularly Mr. Monroe, Cooke, Kelly, and Mr. Allen for their efforts in implementing the affordable housing program. Yet, we believe that the RTC has done very little and can and should do more to ensure the fulfillment of its affordable housing mission.

The housing finance agency sees FIRREA's housing provisions as a golden opportunity to empower a new group of individuals and families who, without RTC's affordable housing program, might never own or rent a decent place to live.

In my home State, we call them the forgotten Texans. But a broader perspective will show that they are in fact the forgotten Americans.

The RTC has the authorization to remember these forgotten Americans who reside in every State and have promised to do so.

Yet, we believe that progress toward attaining this promise has been regrettably slow.

State housing finance agencies and the RTC are natural partners in the disposition of property for low and moderate income use. Housing finance agencies are permanent and accountable statewide Government agencies through which the RTC can work in every State.

Housing finance agencies have clearly demonstrated the capacity to manage, finance and, in some States, own real estate.

On behalf of the State housing finance agencies, I can attest that we take the responsibilities and priority rights that you assigned to us in FIRREA very seriously.

In reference to the clearinghouse operations, you have asked us to indicate how many State housing finance agencies are currently acting as clearinghouses. Unfortunately, more than a year after FIRREA became law, most State housing finance agencies are still not clearinghouses.

Of the 34 States which responded to our most recent survey, only 11 are now officially acting as clearinghouses. Of the 14 States with more than 100 properties as of RTC's June inventory, only 5 are currently acting as clearinghouses.

The responses that we have received indicate a broad range of experiences among housing finance agencies in negotiating clearinghouse agreements. In general, HFA's have found the negotiation process to be long and drawn out, with little clarity as to who at the RTC has the final authority to approve the agreements.

The greatest single concern in negotiating clearinghouse agreements has been RTC's reluctance to provide adequate compensation for clearinghouse activities. Housing finance agencies are not able to take on the extra expense of additional personnel, mailings, copying, and other activities which may be required in their clearinghouse capacity without reimbursement for expenses.

The experience in Texas on the entire clearinghouse issue has been particularly frustrating. Based on THA's substantial experience and expertise in delivering affordable housing, the Texas Housing Agency made a proposal in concert with the RTC which we believe constituted the absolute minimum effort required to effectively disseminate information throughout the State of Texas.

RTC chose to substantially cut back the proposed staffing and technological assistance requested, which, if the agency had agreed, would have resulted in an incredible logjam on the agency's communications network.

Our point was proved most effectively with the onset of the recent THA-RTC bond program. During the first 36 days after the State-wide announcement of the program, almost 6700 calls were received on 4 telephone lines installed specifically for this 2000 property program. This contrasted significantly with RTC's estimated demand of information of 100 calls per month in their counter- proposal.

This gives us clearly a strong indication of the communications support that the Texas Housing Agency would require to successfully disseminate adequate information on the several thousand properties in the RTC's Texas inventory.

In its regulations for the affordable housing program, the RTC indicates that clearinghouses who seek reimbursement will also have to serve as technical assistance advisors, a role which requires more active marketing of the eligible properties.

While some agencies are willing to take on this additional role, it is not an appropriate role for many housing finance agencies whose primary mandate is the financing and the development of affordable housing.

In Texas' case, continuing concern about compensation and an unwillingness to compete with the private sector in marketing Texas REO has led us to decline to act as a clearinghouse based upon RTC's counter-proposal.

Another area of concern for some housing finance agencies is indemnification with respect to clearinghouse activities. We believe that the RTC should grant indemnification in a uniform manner to States which seek it.

While issues such as compensation have been satisfactorily resolved in a few States, the majority of the housing finance agencies are still not clearinghouses.

In reference to the issue on price discounting, since last fall, NCSHA and State housing finance agencies have encouraged the RTC to use its authority under FIRREA to discount prices to make properties affordable to persons below 80 percent of median income.

We commend the RTC for finally approving and implementing the price discounting policy for its real estate assets. We are troubled, however, that the 7-month delay in applying the discounts may make them irrelevant for some affordable housing properties. We are also concerned that the time-based discount policy may encourage buyers to hold off on purchases until the full 20 percent discount is available.

This could result in delayed purchases in the rest of the market as well.

We would recommend that the RTC allow the discounts up front for properties in the affordable housing program.

On the issue of financing, it is important to note that financing is much more difficult for the targeted low income households to obtain than it is for the conventional or even federally or State-assisted buyers. It is essential that the RTC provide some kind of financing assistance for these buyers.

We are disappointed that the RTC has not provided more information to date on sales experience under the affordable housing program on which they are apparently basing their decision to deny subsidies and seller financing. Of the 21 single family properties sold on which data was available, eight used mortgage revenue bonds and an additional six used FHA financing.

In other words, two-thirds of them required financial assistance.

This same trend occurred in Houston despite the fact that the RTC properties in the demonstration program were of relatively low cost and in better condition than the other properties listed in the RTC inventory or for sale in the general market.

In several states, the RTC has negotiated with State housing finance agencies to obtain mortgage revenue bond set-asides for financing assistance for RTC-held properties. MRB's provide interest rates that are 1½ to 2 percent lower than the current conventional rate.

In Texas, we have committed $140 million mortgage revenue bond set-asides. In the first 60 days after the bond closing, 52 reservations for funds under this program have been made, totalling $2.2 million. Other States which have completed negotiations include Arizona, New Mexico, Louisiana, Kansas and Colorado, with Florida still continuing their negotiations.

RTC's eagerness to obtain bond financing through State housing finance agencies and the large percentage of single-family sales which will add on such assistance demonstrates the need for these subsidies.

While we are pleased to assist the RTC through our mortgage revenue bond programs, we believe that, in return, RTC should publicly acknowledge the need for assistance and consider using its congressional authorization to provide its own financing assistance to augment the mortgage revenue bond program.

In addition, the mortgage revenue bond program, the only generally available Federal mortgagee assistance program in today's environment of climbing home prices, is scheduled to expire on September 30 of this year. We are asking the committee and the RTC to support the continued existence of this program.

In reference to the affordable housing inventory, several HFA's have expressed concerns about the accuracy of the information in the inventory that's being provided by RTC. For example, in Texas, we have encountered situations which listed properties which were actually owned by current residents, or the current residents had signed long-term leases which made it impossible to market these properties.

It doesn't take many of these situations to generate negative publicity both for the Housing Finance Agency and for the RTC.

In a few cases, owners of properties incorrectly listed as the RTC affordable housing properties have actually changed their telephone numbers to avoid fielding endless calls about purchasing their homes. Correcting these mistakes is time-consuming and expensive, since corrected listings have to be sent out to replace the incorrect information.

In preparing property information for dissemination, some HFA's, including the Texas Housing Agency, have encountered difficulties with property listings being received from more than one RTC regional office. It would be easier and less time-consuming if the RTC office responsible for a State handled all the notices of property for that State.

The property listings we in Texas received from the RTC are sorted and listed by institution holding title, information which is useless to the homebuyer. Properties in Dallas, for example, might be disbursed throughout three different lists on different pages, depending upon what institutions throughout the State hold title to those Dallas properties.

Senator D'AMATO. May I ask you something?

First of all, would you be so kind as to submit the balance of your testimony for the record, as if read in its entirety? We will accept it that way.

Ms. GONZALEZ. Yes.

[The complete prepared statement of Tish Gonzalez follows:]

Testimony of
Tish Gonzalez, Executive Administrator
Texas Housing Agency

on Behalf of the
National Council of State Housing Agencies

Before the
Senate Committee on Banking, Housing and Urban Affairs

Regarding the
Resolution Trust Corporation's
Affordable Housing Program

September 13, 1990

Testimony of Tish Gonzalez, Executive Administrator, Texas Housing Agency on Behalf of the National Council of State Housing Agencies Before the Senate Committee on Banking, Housing and Urban Affairs

September 13, 1990

Chairman Riegle, Senator Garn, and members of the Committee, my name is Tish Gonzalez and I am Executive Administrator of the Texas Housing Agency. I am here this morning on behalf of the National Council of State Housing Agencies (NCSHA) which represents the housing finance agencies (HFAs) of the 50 states.

We appreciate the opportunity to comment on the activities of the Resolution Trust Corporation (RTC) in carrying out its Congressionally-mandated responsibilities in the area of affordable housing. We commend the RTC and its Oversight Board staff, particularly Peter Monroe, David Cooke, Lamar Kelly and Steve Allen, for their efforts to date to implement the Affordable Housing Program (AHP). Yet, we believe that RTC can and should do much more to ensure the fulfillment of its affordable housing mission.

We see FIRREA's housing provisions as a golden opportunity to empower a new group of individuals and families, who, without RTC's Affordable Housing Program, may never own or rent a decent place to live. Progress by the RTC toward attaining this promise, however, has been regrettably slow.

I will be addressing several key areas of RTC affordable housing policy and operation in my testimony this morning, including clearinghouse operations, discount pricing, financing and inventory issues. I will describe where we started with the RTC, how far we have been able to progress, and what obstacles still remain.

NCSHA is a national, not-for-profit organization created in 1970 to represent the interests of State HFAs in low and moderate income housing. HFAs in every state, the District of Columbia, Puerto Rico, and the Virgin Islands respond to low and moderate income housing needs through the financing, development, and preservation of affordable ownership and rental housing. HFAs collectively operate more than 350 affordable housing programs, which range from homeownership to homeless initiatives.

State HFAs have helped more than one million low and moderate income families buy their first home through Mortgage Revenue Bond (MRB) programs which they administer in every state. We have also financed over 500,000 units of rental housing for low and moderate income tenants through reduced interest rate mortgages financed by tax-exempt bonds. Since 1986, HFAs have also financed over 235,000 rental units with the Low Income Housing Tax Credit for households with incomes at 60 percent or less of area median.

The Texas Housing Agency (THA) was created in 1979 and currently has over $1.4 billion outstanding in mortgage financing, to which an additional $93 million is being added this year as part of the RTC bond program. During the ten years since its creation, THA has provided affordable housing units to over 58,000 individuals and families - 26,628, or 46 percent of which have been provided since 1988. Of almost 18,000 affordable housing properties in the RTC inventory, over 9,000, or 52 percent, are located in Texas.

State HFAs and RTC are natural partners in the disposition of property for low and moderate income use. HFAs bring many unique assets to the table in dealing with RTC's affordable housing inventory. They are permanent and accountable statewide government agencies through which RTC can work in every state. They have demonstrated capacity to manage, finance, and in some states, to own real estate.

Housing markets and housing needs differ considerably from region to region and from state to state. State HFAs offer Congress and RTC a fully seasoned system to make an otherwise overwhelming national problem of disposing of the RTC inventory manageable on a state-by-state basis. HFAs provide regional diversity, they know their markets, and they have long-standing working relationships with private developers, sellers, and financiers of real estate as well as broad experience with HUD direct subsidy and insurance programs.

FIRREA designates State HFAs as both information clearinghouses and as "first look" potential purchasers of properties available for low and moderate income use. As clearinghouses, we are to disseminate information on eligible residential properties to qualified purchasers on request. FIRREA also designates the Federal Home Loan Banks and national nonprofits as potential clearinghouses. To our knowledge, the 12 district Federal Home Loan Banks are now operating as clearinghouses, but there are no national nonprofits currently acting in this capacity.

We take the responsibilities and priority rights you have assigned us in FIRREA very seriously. We have held numerous meetings with RTC and Oversight Board staff over a period of many months to discuss the strategies, guidelines and procedures that RTC will follow in disposing of eligible properties.

Early on, NCSHA formed a working group of HFA directors in the most directly affected states -- principally along the border from

Florida to Alaska, and including Oklahoma, Colorado and Illinois -- to lead our efforts to secure clearinghouse compensation, price discounting, and subsidies as specifically authorized under FIRREA. In addition, the group proposed a plan to RTC under which, to the extent it is in our power, as many eligible properties as possible would have reached the low and moderate income persons you have designated as FIRREA's beneficiaries. This disposition plan was unfortunately rejected by RTC, but some progress has been made of late in the other areas noted. We have also held numerous meetings with representatives of national nonprofit organizations to arrive at common ground in our approach to your challenge to us in FIRREA.

Clearinghouse Operations

In our testimony today, you have asked us to indicate how many state HFAs are currently acting as clearinghouses. Unfortunately, more than a year after FIRREA became law, most state HFAs are still not clearinghouses. Of the 35 states which responded to our most recent survey, only 11 are now officially acting as clearinghouses. These are: Alabama, Arizona, Connecticut, Georgia, Maryland, Nebraska, North Carolina, Ohio, Oklahoma, Oregon, and Tennessee. Of the fourteen states with more than 100 properties as of RTC's June inventory, only five are currently acting as clearinghouses. An additional 18 are presently negotiating clearinghouse agreements with RTC, and most of these have indicated that they are close to signing a memorandum of understanding (MOU), the contract RTC requires between it and all clearinghouses. We would note, however, that some agencies which thought they were close in May are still negotiating their agreements today.

The responses we have received indicate a broad range of experiences among HFAs in negotiating clearinghouse agreements. In general, the HFAs have found the negotiation process to be long and drawn out, with little clarity as to who at RTC has the final authority to approve the agreements.

The greatest single obstacle in negotiating clearinghouse agreements has been RTC's reluctance to provide compensation for clearinghouse activities. HFAs are not able to take on the expense of extra mailings, copying, and other activities which may be required in their clearinghouse capacity without reimbursement for expenses. The RTC Strategic Plan, approved by the Oversight Board in December, 1989, specifically authorizes the RTC to provide compensation to clearinghouses. However, it was only after months of meetings with and pressure from NCSHA and HFA staff that RTC finally agreed to provide compensation and included a reference to compensation in its interim rule for the AHP, published in April. Even now, however, RTC continues to be reluctant to adequately compensate many HFAs, even though it does offer compensation to all other participants in its programs, including real estate brokers and managers.

The experience in Texas on the compensation issue has been particularly frustrating. Based on THA's substantial experience and expertise in delivering affordable housing, THA made a proposal to RTC which we believe constituted the absolute minimum effort required to effectively disseminate information throughout the state of Texas. RTC chose to substantially cut back the proposed staffing and technological assistance, which, if THA had agreed, would have resulted in an incredible logjam on THA's communications network. In just the first 36 days after the statewide announcement of the THA-RTC bond program, over 6,700 calls were received on the four telephone lines installed specifically for this 2,500 property program. This has confirmed our projections of the considerable communication support THA would require to disseminate information on the several thousand property RTC Texas inventory.

In its regulations for the AHP, RTC indicates that clearinghouses who seek reimbursement will also have to serve as Technical Assistance Advisors (TAAs), a role which requires more active marketing of the eligible properties. While some agencies are willing to take on this additional role, it is not an appropriate role for many HFAs, whose primary mandate is the financing and development of affordable housing. In the case of Texas, continuing concern about compensation and unwillingness to become involved in marketing properties has led THA to decline to act as a clearinghouse. RTC should be willing to justly compensate HFAs across the board for their clearinghouse activities, and should not require clearinghouses to perform functions beyond the information dissemination role defined in FIRREA.

RTC has indicated that it does not intend to provide compensation to clearinghouses located in states which have fewer than 100 properties. It is not clear whether this is an official RTC policy or one which has been adopted as a rule of thumb. We believe that RTC should publicly clarify its position on this matter. While some states can absorb the cost of the clearinghouse role when there are fewer than 100 properties, this is not true for all. In addition, some states which have small inventories but which think the inventories may grow are concerned that if they accept a clearinghouse agreement without compensation now, they may be excessively burdened in the future.

Some agencies have expressed concern that their potential dual role as clearinghouses and purchasers of affordable housing properties may give the appearance of a conflict of interest. While the RTC has assured us that there is no conflict, we believe that RTC should issue a public statement to this effect.

Another area of concern for some HFAs is indemnification with respect to clearinghouse activities. These HFAs are concerned that without such indemnification they could be held legally accountable for disseminating incorrect property information supplied by RTC. While RTC appears to have agreed to an indemnification clause in MOU's in some states, it is unwilling to allow the same clause in other states. We believe that RTC should grant indemnification to states which seek it in a uniform manner.

We also believe that RTC needs to do more to publicize the names, addresses and telephone numbers of clearinghouses so that qualified buyers know where to seek information about eligible properties. Such information, as well as new property listings, could be publicized regularly through local news media. Because the level of proactive marketing will vary from clearinghouse to clearinghouse, RTC has a responsibility to ensure that property information is available throughout the country.

While issues such as compensation have been satisfactorily resolved in a few states, the majority of HFAs still are not clearinghouses. The HFAs are ready and willing to help RTC sell eligible properties to low income purchasers. The responsibility now rests with RTC to coordinate its policies and expedite the negotiation of clearinghouse agreements so that properties may be transferred to FIRREA's needy designees.

Price Discounting

Since last fall, we have encouraged RTC to use its authority under FIRREA to discount prices to make properties affordable to persons below 80 percent of median income. FIRREA states, "The Corporation may agree to sell an eligible single family property at a price below the net realizable market value to the extent necessary to facilitate an expedited sale of the property and enable a lower-income family to purchase the property." A similar reference is included for multifamily properties. Despite this authority, the RTC Strategic Plan specifically prohibits price discounts. It was not until May that the Oversight Board reversed this policy and adopted a policy to permit limited price discounts.

We commend the RTC for finally approving and implementing a price discounting policy for its real estate assets. RTC will now allow a 15 percent discount for properties which have been marketed for six months (four months for single family properties) and an additional five percent after another three months.

We are troubled, however, that the seven month delay in applying the discounts may make them irrelevant for some AHP properties. For eligible properties which are not marketed prior to entering receivership and the AHP, the delay will mean that the discount will not begin until after the 90-day first look period has expired. In such cases, properties would be offered for less on the general market than in the AHP.

We are also concerned that the time-based discount policy may encourage buyers to hold off on purchase until the full 20 percent discount is available. This effect could result in delayed purchases in the rest of the market as well. We would recommend that RTC allow the discounts up front for properties in the AHP.

We were encouraged to learn recently that the RTC has approved an internal policy which will allow more extensive discounting of affordable housing properties. RTC apparently will now consider purchase offers as low as 20 percent below the value reached after the 15 percent and 5 percent discounts have been implemented. This deeper discounting is necessary if we are to reach the lower income buyers targeted under FIRREA. We would note, however, that the list price for the properties will not reflect this additional discount. We recommend that RTC publicize this policy through its clearinghouses and through the press so that qualified purchasers are aware of it.

Subsidized and Seller Financing

Another area of concern with respect to the AHP is financing. Financing is much more difficult for the targeted low income households to obtain than it is for conventional buyers. It is essential that RTC provide some kind of financing assistance for these buyers. We are very disappointed that the final AHP regulations postpone once again establishing a policy on providing subsidies and seller financing, although we are encouraged by reports that RTC is about to approve a new policy on seller financing.

We are also disappointed that RTC has not provided more information to date on sales experience under the AHP, on which they are apparently basing their decision to continue to deny subsidies and seller financing. Data released in June clearly indicates that most of the purchasers of affordable housing property in the sales demonstration program require some form of financing assistance. Of the 21 single family properties sold on which data was available, eight used MRBs and an additional six used FHA financing. That is, two thirds required financing assistance. For those properties located in Houston, this was despite the fact the RTC properties in the demonstration program were of relatively low cost and in better condition than other properties listed in the RTC inventory or for sale in the general market. No further data for July or August sales has been made public, but if these trends continue substantial financing assistance will clearly be required.

In several states, RTC has negotiated with state HFAs to obtain Mortgage Revenue Bond (MRB) set-asides for financing assistance for properties in the affordable housing inventory. MRBs provide interest rates that are 1.5 to 2 percent lower than the current conventional rate. State HFAs have helped more than 1,000,000 low and moderate income Americans buy their first home through MRB programs which they administer in every state. These HFAs issued approximately $6 billion in MRBs in 1989 under the private activity bond cap which strictly limits the overall volume of such bonds.

States which have negotiated MRB set-asides include: Texas, with $140 million set aside; Arizona, with a set-aside of $10 million through Local Industrial Development Authorities; New Mexico with $5 million; and Louisiana with $10 million. RTC has also negotiated bond set-asides with local HFAs in Kansas and Colorado and is working on a $6 million set-aside with the Florida Housing Finance Agency. Other state agencies, including those in Minnesota and Nebraska, would be willing to do a set-aside but have so few affordable housing properties that RTC has not accepted their offers. In the Texas issue, as of September 10, 1990, 52 reservations had been made, totalling $2,252,040.

RTC's eagerness to obtain bond financing through state HFAs and the large percentage of single family sales which relied on such assistance unequivocally demonstrate the need for these subsidies. We would like to note that although RTC has assiduously courted the HFAs to provide financing, RTC has continued to deny the need for financing assistance. While we are pleased to assist RTC through our MRB programs, we believe RTC should admit the need for assistance and consider using its Congressional authorization to provide its own financing assistance to augment the MRB assistance.

It is important to note that MRBs are a finite resource. State issuance in governed by a strict volume cap, and many states have more demand than they can meet, even before the RTC sought their help.

In addition and most importantly, the MRB program, the only generally available federal mortgage assistance program in today's disheartening environment of climbing home prices and declining homeownership rates, is scheduled to expire on September 30 of this year. An overwhelming 85 percent majority of the Congress -- 455 of the 535 House and Senate members, including 70 percent of the members of both tax-writing committees -- have co-sponsored legislation in this Congress to extend this time-honored, well-tested, and Congressionally limited program to make the national goal of homeownership attainable by lower income Americans.

Despite the widespread support for and the demonstrated effectiveness of the MRB program, the Administration opposes its extension. We urge the Administration to reverse its position and support a permanent MRB extension in this year's Budget Reconciliation bill. We appeal particularly to Treasury Secretary and RTC Oversight Board Chairman Brady, who has applauded the use of MRBs to finance RTC sales at the same time the Treasury Department is opposing the program extension.

Soliciting MRB financing will continue to be a problem in those states which have the highest housing costs. The limit of $67,500 on single family homes makes affordable housing properties next to nonexistent in such states as Massachusetts. In these states, an MRB set-aside would be most effective if it applied not only to properties in the affordable housing inventory but also to non-AHP properties below the MRB purchase price limits for the state or area.

An additional issue in financing is credit enhancement. Properties which remained in thrift loan portfolios are often there because they would not qualify for sale on the secondary market. Today, this problem continues to make sale of the properties difficult. We recommend that RTC consider providing credit enhancement for these properties. A financing problem also exists in financing condominiums, which often do not fit FHA requirements. We understand that the RTC is about to approve a policy dealing with condominium financing, and we look forward to seeing the details.

Affordable Housing Inventory

Several HFAs have expressed concerns about the accuracy of the information on RTC's inventory. Unfortunately, the information provided in RTC property listings is often incomplete or incorrect.

For example, particularly with respect to its RTC bond issue, Texas has encountered situations in which listed properties were actually owned by the residents, not the RTC, or in which the current residents had signed long-term leases which made it impossible to market the properties. In addition, in some cases the listed properties are actually in such poor condition as to be unmarketable as housing. Correcting these mistakes is time-consuming and expensive, since corrected listings have to be sent out to replace the incorrect information. These errors have also caused hardship for some Texas residents. In some cases, owners of properties incorrectly listed as RTC affordable housing properties have changed their telephone numbers to avoid fielding endless calls about purchasing their homes.

RTC has also had difficulty in identifying the eligible properties which it intends to be served by bond issues in some states. Several months were lost in Texas while RTC struggled to produce a list of 2,500 eligible properties, a mere fraction of the Texas inventory. The same problem is now delaying an MRB reservation which RTC is negotiating with the Florida Housing Finance Agency.

While RTC has made progress in updating its inventory, there is room for considerable improvement. A continuing concern is that RTC does not provide enough information for a purchaser to make a reasonable offer, particularly with respect to multifamily properties. This may be particularly important in dealing with multifamily bids because purchasers may need to complete most of their underwriting before making a bid, and the information RTC is willing to provide is generally insufficient for such purposes.

In preparing property information for dissemination, some HFAs, including THA, have encountered difficulties in that property listings are received from more than one RTC regional office. The regional office responsible for a failed thrift handles all the assets owned by the thrift, not the office responsible for the area in which the assets are located. Thus, the clearinghouse receives inventory information from each regional office which has property in the state. This is further complicated by the fact that the property lists are organized by institution and not by city, and the RTC offices will not send lists of only those properties in a given state. It would be easier if the RTC office responsible for a state handled all the notices of property for that state. RTC has not been willing to assist HFAs in creating a computer program which will pull together the information from diverse property listings. The clearinghouse is left with the responsibility to extract the relevant information.

In Texas, for example, property listings received by THA for the RTC bond program are not sorted by city or county. They are sorted by the institution holding title, information which is useless to the prospective homebuyer. Therefore, properties in Dallas may be on two or three different pages on one list and two or three pages on another list and so on. The lists are provided to THA in Lotus 1-2-3. THA then puts the list into Dbase IV to be sorted by city, county, and other subsorts which will be useful to the prospective buyer. The task is complicated because the regional offices do not use consistent templates, so that each list from the various offices is different, yet they all have to be integrated into one workable list. We recommend that RTC adopt a single clear format for its property listings.

Another inventory concern is sales of affordable housing properties while in conservatorship. RTC has interpreted FIRREA to mean that they cannot require that properties in conservatorship be marketed under the regulations for the AHP. RTC has assured us that they have asked brokers to treat conservatorship properties which would be eligible affordable housing properties if they were in receivership as though they were in the AHP. RTC has also indicated that it will closely track sales of such properties while in conservatorship to see if they are going to qualified purchasers. We believe that RTC should do everything in its power to ensure that these properties are not purchased by speculators and lost from the affordable housing inventory. We look forward to RTC's report on the sale of these properties.

Another concern is that many RTC-held properties are occupied, generally by persons who are on month-to-month leases. In Texas, more than 80 percent of the single family inventory is occupied. We believe that RTC should make every effort to sell occupied homes to the resident if the resident meets the income targets. In addition, it is essential that RTC provide relocation assistance to persons who are displaced as a result of sale of the property.

RTC has recently approved a policy allowing contiguous single family homes totalling more than four to be marketed in bulk as multifamily rental properties. If sold as rental properties, these properties would be subject to the income and rent restrictions placed on other RTC multifamily properties. We appreciate the flexibility this allows in the sale of affordable housing properties. We would like to emphasize, however, that if these homes are resold at a later date as single family homes they should be sold to persons at no more than 80 percent of median income, so that their character as affordable housing is preserved.

We have noted that in its final rule, RTC has defined useful life for multifamily properties as 40 years from the date of sale or 50 years from the date the property was first occupied as multifamily housing. FIRREA does not limit useful life in this manner. While 40 years may appear to be a long period, in fact many multifamily properties have a much longer useful life. We believe RTC lacks the authority under FIRREA to limit useful life to this period.

Another concern is that some property is in too poor a condition to qualify for mortgage insurance. RTC has indicated willingness to pay for repairs to these properties up to a "reasonable" amount. We look to RTC to define "reasonable" and to indicate the process for effecting these repairs.

Property Appraisals

Many properties in the RTC inventory have appraisals that are extremely outdated, some even dating from before the economic downturns that contributed to many savings and loan failures. RTC should provide current appraisals. If RTC is unable to do so, we recommend at a minimum that RTC indicate the date of the last appraisal on its inventory listings, so that buyers and RTC staff alike can estimate the likely change in value since the last appraisal.

Outdated and therefore, most likely inflated appraisals could prevent properties that belong in the affordable housing inventory from ever getting there. In the event that an offer for a non-AHP multifamily property comes in at or below the price that would make it eligible, we believe that the property should be sold as if it were originally in the affordable housing inventory, complete with all low income use restrictions. In addition, offers on non-AHP single family properties at or below the AHP price threshold of $67,500 should be sold only to qualified purchasers under the AHP. Due to the imprecision of appraisals, any non-AHP single family and multifamily properties which are listed within a few percentage points of the eligible AHP price should be sold as part of the affordable housing inventory, even if the list price is offered .

We also suggest that RTC release the appraisals for its affordable housing properties, at least to the clearinghouses and TAAs who will be aiding low income households to purchase a home. RTC has criticized THA for disclosing appraised values and has notified THA that, in its opinion, disclosing the appraised values of affordable housing properties held in conservatorship to the public is in violation of FIRREA, which mandates that the RTC "maximize" its return on sale. RTC claimed that with the appraised values printed and circulated among the public, they were "losing contracts" because the appraised values were lower than the price for which the homes were being marketed. Once THA verified and confirmed that it was not, in fact, violating either federal law or the terms of the bond commitment agreement, it proceeded to mail the list with the disclosed values. The term "appraised value" had already been omitted, and is being replaced with the term "estimated value."

While home sellers do not normally list the appraised value of the home, buyers in the conventional market have the option of hiring an independent appraiser. Low income purchasers often do not have that option, and there is little financial gain and much lost social purpose in trying to obtain an offer above appraised value from the very people FIRREA was intended to help.

We commend RTC for its new multifamily appraisal policy, in which RTC will do two appraisals on multifamily properties in the AHP, one at highest and best use and one taking into account the low income use restrictions. RTC will then sell the property at the lower of the two values.

The new RTC multifamily appraisal policy has already had a positive impact in Georgia. The Georgia Residential Finance Authority (GRFA) recently financed the purchase of a 14-unit multifamily RTC affordable housing property by a Savannah nonprofit, the Community Housing Services Agency, Inc. Originally listed in the RTC inventory at $110,000, the property was then listed in the affordable housing inventory at $98,000. RTC accepted the nonprofit's offer of $78,100, or 80 percent of the list price. GRFA loaned the nonprofit the funds for the purchase price, to be repaid at two percent interest. The nonprofit will use state Housing Trust Fund monies for rehabilitation of the property. The nonprofit has also received Low Income Housing Tax Credits through GRFA and is applying for CDBG funds. GRFA is planning to finance nonprofit purchase of two more RTC multifamily affordable housing properties, including a 24-unit property in Valdosta, Georgia.

Marketing Period

With respect to the 90 day first-look marketing period for affordable housing properties, we are concerned that RTC's policy of accepting the first acceptable offer on single family properties may prevent the lower income purchasers within the eligible range from making offers. The higher income or more sophisticated buyer will be able to make an offer more quickly than the lower income buyer. While we are sympathetic to RTC's concern that waiting until the end of the first look period may burden the person making an offer, we believe RTC should at least wait until it has received competing offers or it seems clear that there is no lower income buyer with a significant interest in purchasing.

We also believe that the recent extension of this policy to multifamily properties may give the more sophisticated well capitalized purchasers an advantage over smaller nonprofits.

RTC Structure

A consistent difficulty the HFAs have encountered in dealing with RTC has been lack of clarity as to where the lines of authority are and lack of coordination between asset disposition and affordable housing policies. We realize that RTC has had the daunting task of creating a new bureaucracy under tremendous public pressure for quick action. We realize also that there is a seeming conflict between RTC's mandate to sell properties at the greatest realizable market value and its mandate to direct affordable housing properties to low income borrowers.

We know that RTC has focused most of its energy on resolution of whole thrifts and others of the many difficult issues on its agenda, but the successful implementation of the Affordable Housing Program must not be lost in other matters. RTC affordable housing staff need clear direction as to what the goals of the Affordable Housing Program are. We believe those goals are to move affordable properties to the lowest income people possible - those who could never have afforded a home if RTC had not been created. RTC has made recent and, frankly, long overdue progress in implementing the Affordable Housing Program. Now is the time to see that that program is effectively giving new hope to low income households.

Senator D'AMATO. And then I'd like to, if I might because we only have a few moments left, start the questioning with you, inasmuch as I've asked for your indulgence.

It seems that a good part of your observations relate to the informational side or the lack of information and coordination of that information from RTC to prospective purchasers. And indeed, even to your agency.

Is that correct?

Ms. GONZALEZ. That is correct.

Senator D'AMATO. If this has been the case, have you had opportunity to speak to, let's say, the people running RTC?

Do you operate out of Dallas?

Ms. GONZALEZ. We operate out of Austin.

Senator D'AMATO. Out of Austin.

Ms. GONZALEZ. Yes.

Senator D'AMATO. Have you had occasion or opportunity to bring these observations, which I think are very cogent and important and upsetting because some of them obviously would reflect the kind of attitude that I think, in dealing with this situation, is one which will create a never-ending nightmare, and instead of making real progress in the disposition of properties, will just clog up that pipe and make it impossible and, indeed, set in motion a perception which will grow that, forget it. Try to get a hold of these people and they send you a list of properties to some place 300 miles away.

So I want you to know that your testimony is valuable in that at least we have that in the record, and it certainly has made an impression on me about this.

Have you conveyed the things that you're saying here as it relates to the manner of the almost disinformation that comes out and the problems attendant with the RTC folks?

Ms. GONZALEZ. We have, Mr. D'Amato. We've conveyed that. We have a program in Texas of $140 million in which we receive information.

We have conveyed our problems to them. It is slow in receiving any response. I think of most concern has been that they themselves actually are not interested in even listing values to those properties. And that, in itself, is a clear indication that it would be very difficult for a low—income or moderate—income homebuyer to go out and purchase a property without a value.

Senator D'AMATO. You're a pretty powerful person. Have you yourself picked up the phone, Tish Gonzalez here——

It's Tish, right?

Ms. GONZALEZ. That is correct.

Senator D'AMATO. And said, this is Tish Gonzalez. I'm the executive administrator of the Texas Housing Agency. And my governor said, what the heck is going on? You're sending these things all over the place.

Have you done that? Well, you wouldn't do it exactly that way, but——

Ms. GONZALEZ. Not quite like that.

Senator D'AMATO. Have you ever called up the head of the RTC wherever he operates out of down in your region and said, listen, let me point out to you 5 things? Or do you just put something in the mail?

You know, I get people that tell me, "I sent you a letter. Did you get my letter?"

Well, if I told them, "You know, I average a million letters annually that come into my office." And they sound surprised that I didn't see it, you know. And the fact is it might be a pretty important matter. It might be a very important matter.

So what I'm saying to you, have you ever picked up the phone, and I'm not being critical.

Ms. GONZALEZ. Sure.

Senator D'AMATO. I really want you to understand that because I think the fact that you're here and the fact that you've given this testimony and the fact that there are just a number of areas, you jampacked that and you read this thing as a speedreader, which you have to do if you're given 5 minutes—it's all important, so I'm going to get it all in.

But did you ever have an opportunity to pick up the phone and search out whichever bureaucrat or chief bureaucrat is there? We can't even call them now because if we call them, it's some ethical violation. But I could call on your behalf. You haven't ever contributed to my campaign.

And if you're in the other party and worked against me, why, then, that would give me a gold star.

But, anyway, have you ever called them up and said to them, "Seriously, hey, listen, these are terrible, glaring deficiencies and you shouldn't be doing this?"

Have you done that?

Ms. GONZALEZ. Yes, we have, through different approaches. Through the NCSHA, the national council, we've actually——

Senator D'AMATO. Talk slow. I'm not running out for a while.

Ms. GONZALEZ. Through the National Council of State Housing Agencies, we've actually set up a working group of housing finance agency directors that have met through our own initiative with the RTC on several occasions and described our difficulties.

Senator D'AMATO. Where did you do that? Up here?

Ms. GONZALEZ. We've done it up here. We've done it also——

Senator D'AMATO. Who did you speak to up here?

Ms. GONZALEZ. We've spoken to Mr. Allen, Mr. Kelly, Mr. David Cooke, several different members. We've also not only spoken to them here in Washington, but in Dallas as well.

In Texas, under this bond program, we have not only been sending correspondence, as you so stated, but I've also instituted internal working groups, as well as with the RTC, that we get into phone call conversations every other week or so and describe the problems and readdress the problems.

Senator D'AMATO. Have they made any progress?

Ms. GONZALEZ. They've made some progress, but very little progress. And that's basically what I'm saying, is that they've done very little and they can and should do a whole lot more.

Senator D'AMATO. OK. You took all this time to come on up here, and I'm going to ask if you wouldn't after this, if you could spend a few minutes with staff and maybe point out those problem areas, as it relates to the management of this portfolio on the information side, on the information side, OK?

Ms. GONZALEZ. OK.

Senator D'AMATO. Because if you think I want these turkeys making policy as it relates to how they're going to give greater subsidies, I don't. I mean, I just don't.

Ms. GONZALEZ. Sure.

Senator D'AMATO. But that's a difference of opinion and philosophy that we may have, and reasonable people can disagree. Even sometimes unreasonable people can disagree.

But as it relates to the areas that you pointed out, it just jumps out at you that there's a kind of attitude of the things that are taking place certainly need correction.

If you wouldn't spend a few minutes with our staff developing particularly that side, and you might even follow up with some written communication, the most egregious areas that you think in what areas can we do better, RTC can do better, as it relates to that informational side? I think it's just really important. I think it's crucial. I mean to have them out there and sending the wrong list in the wrong ways. It's silly.

Then how can they utilize your agency. What a great resource in Texas and what a great resource housing agencies can be. They already have an infrastructure. You don't want your people atrophying. It's better to have them working hard.

As a matter of fact, when they get done in the day and the phones are ringing and whatnot, they must be exhilarated, as opposed to one of these days where they have to duck and hide because they don't have too much to do. And that happens in a bureaucracy. I've watched it for a while. People really rise to the occasion.

So maybe we can spend a little time, OK. And I would ask you, if you would, to give me a copy of what you perceive to be the most important of those areas.

OK, Ms. Gonzalez?

Ms. GONZALEZ. Sure.

Senator D'AMATO. Now getting to the experts here on the private side, which is just as important, if I were to say to you, Mr. Rueter, what two or three things, you're in charge of RTC. You're the guy. You wouldn't take that if they paid you twice as much as you're getting now.

But if they did and we drafted you, all right? You couldn't turn it down. And they said to you, "all right, Marty. Here it is, big guy. This is yours."

What would you say?

Mr. RUETER. Well, I think the first thing I would do is I would put me on a commission basis to sell the properties.

Senator D'AMATO. OK. Would you?

Mr. RUETER. Oh, yes, I would be happy to do so. And I would make a lot of money.

Senator D'AMATO. OK.

Mr. RUETER. The incentives aren't there to sell the properties.

Senator D'AMATO. But just tell me what under the existing framework, and then if there are some suggestions for legislative change, what are the two or three?

Mr. Rueter. One thing I would do is I would not reinvent the wheel and try to start up another real estate business. The home sales centers is duplicative of what real estate brokers can do.

Senator D'Amato. They have home sales centers?

Mr. Rueter. They're setting up home sales centers for informational purposes, which I'm just mind-boggled by that because it's totally unnecessary.

What is needed is home sales centers with 30 people in each. Getting computerized information is not my idea of selling real estate.

What has to be done is——

Senator D'Amato. Did you ever say this to any of these guys? Have they ever talked to you?

Mr. Rueter. Well, we were there in November and we have been making presentations to the RTC on various innovative ways to move property. But for a while there, it was the national office that was making decisions. And then recently, it was transferred to the regional offices, and it was back to square one again.

The private sector——

Senator D'Amato. So, in other words, you got no place. You just bumped your head into the wall.

Mr. Rueter. Correct, sir. The private sector can better evaluate the properties quickly, inexpensively, oftentimes for free.

Repairs—the authorization to make repairs should be done at the local bases. The manager of the RTC office should be given the immediate, automatic authority to spend certain money to get repairs done.

Senator D'Amato. You mean at certain limits.

Mr. Rueter. At certain limits.

Senator D'Amato. In other words, at a certain amount, you can do it.

Mr. Rueter. Offers to purchase should be accepted. There should be parameters as well established as to you can automatically approve certain offers, rather than putting buyers through this process of waiting and waiting and waiting, and agents through the process of giving your first-born son every time you have to write a real estate transaction.

Senator D'Amato. Should we, for example, like get into the area of—let's say given—well, you wouldn't give an exclusive to one. You see the problem you would have.

Mr. Rueter. No. I would use the HUD, Fannie Mae, Freddie Mac formula, which basically puts properties on the market over a 2 week period. The property is put on the list. The agents go out and look at them. The properties, by and large, are in showable condition. Offers, a very simple purchase contract is rendered. It's somewhat of a sealed big concept. Offers must be in by Tuesday at noon and Friday at noon. They're opened up and——

Senator D'Amato. Who's in charge of this whole—maybe you don't know, but who's in charge of this sales program, the disposition part of this? Do you know?

Mr. Rueter. At the RTC, I don't know.

Senator D'Amato. Do you fellows know?

Mr. Rueter. It's been changing. That's why we're not quite sure.

Senator D'Amato. Lamar Kelly? Well, he was here today.

Mr. Rueter. Tom Horton is what Robin tells me.

Senator D'AMATO. Tom Horton, huh? Boy, he's probably not even here.

Anybody here representing RTC, still here? Oh, what the heck. Oh, you are? Really?

What do you do for them?

Mr. ALLEN. Steve Allen.

Senator D'AMATO. Well, c'mon up here. Come over here. I wish I could spend more time at this job being a Senator instead of having to do all these crazy things that they have me doing defending myself. But let me ask you something.

You hear some of these things? You're in charge of the affordable housing. Did you hear Ms. Gonzalez?

Mr. ALLEN. I did.

Senator D'AMATO. Well, do you feel good about it?

Mr. ALLEN. I'm concerned about the points that she raised.

Senator D'AMATO. And what is your name, for the record?

Mr. ALLEN. Steve Allen. I'm director of the affordable housing program.

Senator D'AMATO. Will you sit with her afterward with the staff and listen to some of this?

Mr. ALLEN. Sure.

Senator D'AMATO. And maybe, Steve, you can help by picking this up. She has no axes to grind. Maybe we can do something there, in the areas that she lists, that you have something, and the other areas.

Mr. ALLEN. Yes. I just want to make clear for the purposes of the hearing——

Senator D'AMATO. But do it into the microphone.

Mr. ALLEN. In the present working relationship we do have, and our ongoing work together between the Texas Housing Agency and RTC concerning information dissemination.

Senator D'AMATO. Well, what about it? She says it's bad.

Mr. ALLEN. Well, I want to make clear that we have a process underway, as Tish Gonzalez and her staff identify the need to make corrections, how those corrections are being handled and the corrections that have been made to date.

Senator D'AMATO. OK. I'm in a good spirit. I won't read and respond.

Would you think it would be appropriate, she's here, she's come here.

Mr. ALLEN. Certainly.

Senator D'AMATO. Spend a little time with her. Take a look at these couple or 5 or 6 biggest areas that she might suggest that you can improve some things and take a look and see what we can do, huh?

Mr. ALLEN. Certainly.

Senator D'AMATO. All right. I'm not coming down on you personally. I'm delighted to find you here. Heck, everybody else on your side just ran away.

I think we run these things backward. We should have had panel 2 talk first, and then we get Kelly up there. And then we should ask Kelly, "What about this, Kelly? What do we know about this gibberish?"

You think I can read all these? Look at all these [indicating]. Look. What guy do you think read all of that testimony, huh? I didn't even look it over.

My mother used to say when I'd bring home my books, "What do you bring them home for? You don't look at them."

Anyway, so now here's Rueter, and he's pretty good. He knows about that stuff. He didn't get to be the chief honcho over there in terms of how you sell houses. I remember Century 21, when I used to see those little signs up there. I'd say, who'd put a Century 21 sign. Wow, who doesn't have one?

But you guys could listen and profit. You have your own home centers? I thought that was in Long Island, they have some home centers. They advertise. They sell furniture.

So you really have your own home centers?

Mr. ALLEN. The correct title are national sales centers. And the emphasis of those sales centers is to sell commercial real estate, not individual single-family residences.

Senator D'AMATO. Well, now you're going to get a response. Good. At least this is enjoyable to me at this point. The best part of my day.

Martin, what do you say about that?

Mr. RUETER. Well, our response is that if the information is properly disseminated to real estate brokers, they will go out and market the properties. They won't have to wait for people to call them.

If the numbers are correct and it's a good deal, they will get the investors.

Senator D'AMATO. You want to know something? No doubt. And you've got these guys up there, all over, wherever you have distressed properties. The real estate people in the community are dying, and they're anxious, and they'll go out there, and they'll be a resource.

And it seems to me that somehow, you've got to try to marry the two. The fact that you do have an experienced, trained, capable private sector that can really work and develop, I wouldn't want to buy a property from a bunch of turkeys working for the government, including myself. I don't know. I can't compete with these people in terms of putting together complex deals as it relates to the commercial sector.

Even if he's the most well-intentioned, grade 13, 14 or 15, he can't either. You talk about wrap-around mortgages and inside, out. I mean, c'mon.

But, anyway, you're not responsible for that.

Mr. ALLEN. But, Senator, could I just add one more comment to that, since we're on the subject?

Senator D'AMATO. Sure. Yes.

Mr. ALLEN. The concept of the sales center is not to take away any opportunities for brokers. All the real estate is listed with brokers.

Senator D'AMATO. Right.

Mr. ALLEN. The objective of the sales center is to both make it easier for the broker, and equally as important, the purchaser, to have one place to go. And therefore, the purchaser can go to a sales center and discuss the kinds of properties they're interested in in that given locale and how that sales center can contact the broker on behalf of the interested taxpayer and purchaser who wants to purchase that property.

The role of the sales center does not replace any of the valuable services that brokers play in the sale of the real estate.

Senator D'AMATO. Do you have these sales centers all over the country now?

Mr. ALLEN. Yes, we do.

Senator D'AMATO. Boy, oh, boy. You know what our committee should do? We should send some guys in there to check on your sales centers to see how they operate.

Put that down. Right? You tell them to be on the look-out. Maybe I'll send Mama D'Amato in there to check on some properties and see what happens and how it responds.

Would you think that would be appropriate?

Mr. ALLEN. Sure.

Senator D'AMATO. Could I have a list of your sales centers?

Mr. ALLEN. Yes. Mr. Kelly, for the record, stated that RTC would submit a list of our sales centers and their addresses.

Senator D'AMATO. Pardon me? I didn't hear you.

Mr. ALLEN. Mr. Kelly stated earlier that he would submit for the record a list of our sales offices and the contacts and the addresses of those offices.

Senator D'AMATO. Great. But I don't want it for the record. I understand that he did for the record.

Could you get—these are very responsible young gentlemen here. [Indicating committee staff.] Could you get them one of those lists for me?

Mr. ALLEN. Certainly.

Senator D'AMATO. That's terrific. All right. Marty, you could probably go on and on and on. And I have somebody waiting for lunch.

Mr. Hartman, tell me the one area that concerns you the most in this whole situation as it relates to the disposition of properties.

What would you advise? What could we do better?

Mr. HARTMAN. Senator, I would advise, due to the fact that a very large percentage of the troubled assets owned by the RTC are loans to individuals and not properties on which the RTC has a title that they can actually sell the property.

With regard to those loans, I would recommend that the RTC institute restructuring with the original borrower as a better source of obtaining for the taxpayers cash flow on that troubled loan.

I think that needs to be pursued as the FDIC has pursued it for several years.

We have a model at NCNB that we have developed jointly with the FDIC. We've collected over $3½ billion, the majority of that through restructuring in the last 18, 20 months.

Senator D'AMATO. That's interesting.

Mr. HARTMAN. We think that restructuring loans, with the individual who had the original dream and does not have the ability to repay due to the collapse of the economy, is by far a very, very productive effort.

Senator D'AMATO. So you're saying there's some money out there that can be collected in an easier way, rather than to go through the disposition of foreclosure, the whole rest of that.

Mr. HARTMAN. Yes.

Senator D'AMATO. And that's a possibility. That's not being done now?

Mr. HARTMAN. It is not being done by the RTC at this time. The FDIC is doing it.

Senator D'AMATO. Was that question posed to Mr. Kelly as to why it's not being done?

Mr. HARTMAN. We work frequently with Mr. Kelly and Mr. Roelle on these issues.

Senator D'AMATO. Have you suggested that to Mr. Kelly?

Mr. HARTMAN. Daily. Hourly. Weekly. Monthly.

Senator D'AMATO. And what did he say?

Mr. HARTMAN. We're meeting with them later today, as well as tomorrow.

Senator D'AMATO. Would I be presumptuous if I were to ask you to put on a piece of paper just that, what your suggestion was and that the fact that you did meet with Mr. Kelly and what the response was, and put it in the form of a suggestion and why and how? Just your past few remarks.

Mr. HARTMAN. Much of that is included in the testimony. But we will get Mr. Kelly's response.

Senator D'AMATO. Yes. Would you just, this little dialogue that we had, as it relates to what you would do and as it relates to attempting to restructure and why you believe it's important.

I don't want all the testimony because you can read the testimony. I'm trying to boil it down, and that's unfortunate that the staff didn't—they're really good and they're paid to read these things, why they didn't propose that as a question to Mr. Kelly.

A lot of other Senators aren't here because there are a lot of different hearings going on, and I was away because I had a lot of other things to do.

Mr. HARTMAN. Senator, if I could make just one other comment.

Working with the private sector I think is very important, requiring qualified bidders when they do put projects out to bid, as opposed to using a bingo approach with regard to getting a bidder's list. I think that's very important.

I also think providing RTC financing is important on noncashflow properties. And I also think that the bulk sales program to the private sector, those are all programs that need to be pursued. We're working with the RTC on them.

The staff is working with the various levels of oversight to get approval to pursue those programs.

Senator D'AMATO. Are you suggesting that really, what we're talking about is the time to really get them up to speed, so there's reason to be hopeful, more optimistic than one might, that this is a process in which they're——

Mr. HARTMAN. They're getting closer, but real action is still several months off.

Senator D'AMATO. Well, let's hope we can give them a little poke here and there in the right direction. I don't mean to poke in a——

Mr. HARTMAN. It's a tough job.

Senator D'AMATO. Sure. It's overwhelming. It's overwhelming.

I want to thank the witnesses on behalf of Chairman Riegle. Thank you for your patience. I tried to give you a little bit of something.

We stand ajourned.

[Whereupon, at 12:46 p.m., the hearing was recessed.]

[Response to written questions and additional material supplied for the record follows:]]

RESPONSE TO WRITTEN QUESTIONS OF SENATOR KERRY FROM
LAMAR KELLY

Hearing on RTC Asset Disposition - September 13, 1990

Resolution Trust Corporation
Office of Legislative Affairs
Washington, DC 20434-0001

September 24, 1990

Honorable Donald W. Riegle, Jr.
Chairman
Committee on Banking, Housing and
  Urban Affairs
United States Senate
Washington, D.C. 20510

Dear Mr. Chairman:

Thank you for your letter of September 14, 1990 forwarding follow-up questions from the Committee's September 13, 1990 hearing regarding asset disposition by the Resolution Trust Corporation.

Enclosed, please find the RTC's response to these follow-up questions.

If I may be of any further assistance, please feel free to contact me.

Sincerely,

Loren T. Hooper
Deputy Director

Enclosure

FOLLOW UP QUESTIONS TO SEPTEMBER 13, 1990 TESTIMONY

Q.1. Can you provide the Committee with any examples of the kind of deals that Mr. Myerson alluded to and then tell us what procedures have been implemented to prevent such abuse in the future?

To what extent should the government screen buyers, managers and brokers to make sure none were involved in the savings and loan collapse?

A.1. As part of RTC's contractor registration program, we evaluate a firm's fitness and integrity to act as a contractor for the U.S. Government. Specifically, we use this process to screen out firms or individuals which may have been convicted of a felony, caused a substantial loss to one of the deposit insurance funds, etc. Through this process and our overall contractor surveillance and oversight program, the RTC is confident that we can effectively screen out contractors who clearly should not be allowed to profit or benefit from the bailout of insured depositors of savings and loans associations.

The issue with respect to buyers of RTC property or assets is a more difficult one. First, it needs to be mentioned that the RTC sells assets for market value and a basic RTC philosophy is that all assets should be exposed to the marketplace to assure the RTC and the U.S. taxpayer that they are getting the best value for their assets. Hence, any buyer, whether a totally unrelated third party or an "insider", would not be in a position to realize a windfall excepting to the extent that any speculator in distressed assets can experience a substantial profit if the market turns around. Regardless of the value of a particular property at the time it was constructed or prior to the depreciation of values in the market place, the RTC has to recognize the reality of current values in the current market.

At the present time, the RTC does not have any specific policies or procedures which will prevent a buyer who in some way was responsible for the collapse of a particular institution(s) from buying a property or asset from the Corporation. Because many of the properties in our portfolio have depreciated substantially in value from their initial cost, it is quite possible that an "insider" could buy one of our properties for a significantly lower amount than the investment made by the institution when it funded the loan for the project or funded the purchase of the project. This is simply a reflection of the reality of the market place and the sales price for that property would not be any higher if a totally unrelated third party purchased the property. With that said, we might point out that RTC underwriting guidelines would generally preclude such an insider from purchasing the property with RTC financing as part of the transaction.

Recently, the RTC has been considering various policy statements to address this issue. We have drafted a policy which would bar certain individuals from buying RTC assets but it is not yet in final form. We are not aware of any specific examples of the transactions alluded to by Mr. Myerson.

Q.2. Would it cost the taxpayer less if the RTC holds on to many of these properties and waits for the inevitable rebound of the Texas economy - when that happens, then sell the properties at top dollar? What sort of analysis has the RTC done concerning the disposition of property in Texas? How many properties do you plan on holding, for how long and for what cost? What are your current assumptions about market conditions in the state?

A.2. To begin, the RTC is the recipient of opinions and analyses of Texas real estate markets from some of the best real estate firms in the country. In the course of developing our overall strategies, we take this information into account. Secondly, while RTC has about 15 billion dollars in real estate in its current portfolio, it will likely triple that amount over the course of the RTC's life. Consequently, the RTC does not own a number of the properties that it will acquire in the future through acquisitions of new institutions and foreclosures. Should the Texas real estate market turn around substantially, the properties coming into our portfolio at a later date will be sold in a much more favorable climate. Third, the RTC's present strategy is to sell all of its assets and not speculate on appreciating values. Because the marketing period for many types of properties in distressed markets (i.e. raw land, nominally occupied commercial buildings, etc.) is so long, even with this sales philosophy, the RTC can expect that it will take years to sell many of the properties we currently hold in our inventory. Thus, should the climate really improve, we will benefit by the market upturn anyway. Fourth, the carrying costs for non-income producing real estate or real estate property that has a deficit cash flow are substantial for the taxpayer. To continue to fund or incur this carrying cost in the hope of a turn around in the market is a gamble which could prove expensive to the U.S. taxpayer. To the extent the RTC can convert these assets into earning assets through a cash sale or financed transaction, we would be better off with the continual interest we could earn on the new investment rather than speculating on a significant turn in the market and higher prices in the distant future. Unfortunately, at this time no one is really sure what will happen to real estate values in the state of Texas.

According to informed individuals, certain segments of the Texas economy are improving. Income producing, multi-family properties are in demand at present and it is fairly easy for RTC to sell these properties for good value. Additionally, in certain markets such as Houston and Dallas, we are experiencing favorable results with the sale of our single-family home portfolio. In fact, single-family homes in Houston are typically selling above RTC's appraised value reflecting the appreciating value for these properties. Although prices are increasing or have stabilized, appreciation rates appear to be in the 5 to 10 percent range at best and it remains to be seen whether these rates can be sustained in the future. Except for fully occupied properties with favorable cash flows, the market still has a long way to go to absorb the over supply of unoccupied or partially occupied commercial structures. Raw land continues to be viewed as a poor investment and significant sales activity in this group is very doubtful.

The RTC does not sell its real estate at "fire sale" prices. All RTC properties are appraised according to RTC's appraisal regulation which specifically require the appraiser to supply value consistent with sound appraisal methodology, assuming current market conditions. While current values may seem like fire sale prices relative to values which existed in the boom period of the 70's or early 80's, they represent the current value of those properties and cannot be viewed as fire sale value relative to current market conditions. Typically, the RTC prices its property slightly over appraised value and would only lower its price after market exposure dictates that the current appraisal was too high and that our pricing needs to be lowered to reflect current market conditions.

Finally, although there are continual references to the turnaround in the Texas economy, to date, that inevitable turn has seemed to escape the Texas marketplace. While present indicators suggest some strengthening in several areas of the Texas economy, this has yet to lead to circumstances which would result in significantly higher prices for RTC real estate which would offset the cost of carrying those properties for indefinite time frames.

Q.3. How is the accelerated sale of property plan working to date? Could you tell me how many properties have been lowered by 15%? Is it still the position of the RTC that over a billion dollars will be saved through this plan?

A.3. In May of this year, the RTC Board of Directors approved a policy allowing for the reduction of minimum acceptable disposition prices for real estate. The policy permits a 15 percent reduction in price after six months of market exposure for commercial properties (four months for single-family homes) if purchase offers and other market evidence indicate that the initial valuation was too high. Furthermore, the price of an unsold property can be reduced by a total of 20 percent from appraised value after three additional months of active marketing.

Due to the recency of the policy, no information is available regarding the number of properties that have had price reductions as a result of this policy implementation. We still believe, however, that the RTC can reasonably expect to save over a billion dollars in holding and working capital costs from increasing the rate of real estate sales by just six months.

Q.4. In May of this year, the GAO reported that "overall, the RTC had about 36% of its planned 5,400 staff, noting that staffing levels at the consolidated sites varied greatly from about 55% of full capacity in Kansas City to 14% in Phoenix." What is the current staffing level of the RTC? Are we doing better? What regional offices are still understaffed?

A.4. As of September 18, 1990, the current staffing level of the RTC was 5,124, or about 77 percent of our planned staffing levels of 6,688 for September. This reflects a hiring rate of about 300-400 people per month, which is a significant improvement over earlier periods.

None of our regional offices have reached authorized staffing levels. This is due primarily to our inability to hire quality people at a rate much higher than the 300-400 people per month rate we are currently experiencing. This is due to organizational changes which have resulted in an increase in authorized staffing levels over previous periods.

Q.5. In testimony before the House Banking Committee last May, William Gadsby, the Director of Federal Management Issues for the GAO stated that "we believe the RTC also needs to work with other government agencies such as GSA, VA and FHA to identify and pursue asset disposition approaches or strategies that are in the best interest of the government as a whole. Indeed a number of federal agencies have large inventories of similar assets for disposal in the same markets, and it is important that these agencies avoid undue competition with one another."

To what extent is the RTC working with its counterparts in these agencies to see if the assets they are managing could be used for public purposes that would otherwise have to be met in whole or in part with federal appropriations?

A.5. The RTC has established an interagency working group in Washington to discuss coordination of asset disposition policies and actions and to compare experience. Regional offices have been directed to establish comparable liaison relationships at the field level.

All sellers in a competitive market are effected by the existence of other sellers in the same market, but the consultative process has not indicated any specific deleterious competition between government agencies thus far. The RTC will continue to consult with other agencies to harmonize actions to the extent reasonable and feasible.

The RTC is authorized to transfer properties of essentially no value to certain public agencies and non-profit organizations for public purposes. Policy implementing that statutory provision has been published. Generally however, the RTC has a statutory mandate to maximize present value to the taxpayer. In addition, the RTC has a fiduciary responsibility in managing the assets of conservatorships and receiverships which generally have other creditors in addition to the RTC. The RTC thus has limited ability to transfer assets below market value to use as a substitute for federal appropriations or for other public purposes not specifically authorized by FIRREA.

Q.6. Few households, if any, have been served at incomes significantly less than 80 percent. How can you conclude from this experience that subsidies are not needed to reach the lower income households targeted under FIRREA?

A.6. Although FIRREA authorizes the RTC to provide subsidies and seller financing to facilitate the sale of properties to lower-income families, the RTC has been encouraged by the Oversight Board to make recommendations on the type of financing that is needed to support the sale of RTC-held properties. The Oversight Board approved the expenditure of up to $6 million in loan commitment fees for mortgage revenue bonds (MRB) so that purchasers of eligible residential properties would have the benefit of the reduced interest rates, a subsidy derived from the tax exempt status of MRBs.

The RTC has purchased $189 million of mortgage revenue bond commitments across the country. Funds from these issues will provide reduced interest rate mortgages, averaging 8.5 percent, to assist qualifying households purchase RTC single-family properties. The mortgage revenue bond issues will allow the RTC to sell both receivership and conservatorship properties to qualifying purchasers. As a result of that emphasis on making financing available through housing financing agency tax exempt bond issues, more families are able to qualify and benefit from reduced monthly mortgage interest rates.

As indicated in the Report on the Demonstration Program, the Affordable Housing Disposition Staff in each region has focused on identifying a range of resources that could be utilized to finance properties made available for sale. For example, the Affordable Housing Disposition Specialist in Phoenix, Arizona organized a successful Affordable Home Fair. Using $10 million MRB reservation coupled with $1 million award of affordable housing funds from the Federal Home Loan Bank of San Francisco and $600,000 from the Arizona statewide Housing Trust Fund, participants in the home fair could receive downpayment assistance and reduced interest on mortgages under the bond reservation from 8.5 percent to 6.25 percent, as well as receive assistance on closing costs. It is this type of program involving a combination of private and public resources that our affordable housing disposition staff are beginning to utilize to assist purchasers of properties offered for sale under the affordable housing disposition program.

Based on the economic value of the properties in the affordable housing inventory 64 percent of the inventory falls within the range of affordability for families at 50 percent of median income or below in major markets where the RTC has single-family residences. Programs like the Affordable Home Fair will help ensure that low-income families will benefit from the sale of eligible properties consistent with the legislative mandate.

For properties that the RTC has identified as difficult to obtain financing for -- properties in rural areas and condominiums -- the RTC is discussing specific financing proposals with the Oversight Board and expect to have a program in place to support the purchase of those properties by qualified purchasers.

Additionally, the Oversight Board recently approved a policy allowing the RTC to accept offers at 80 percent of market value for residential properties in the Affordable Housing Program. Our establishment of market value includes discounts for holding costs. The normal limitations for sales outside the Affordable Housing Program are 90 percent for non-distressed areas and 95 percent for distressed areas. The RTC's implementing procedure for sales down to 80 percent of net realizable value requires preference for individuals with incomes less than 80 percent of median income.

Q.7. Does the RTC plan to offer assistance to augment the strained MRB program? Are you working with the Treasury to encourage them to rethink their opposition to the MRB extension in view of RTC's reliance on MRB financing?

A.7. State Mortgage Revenue Bonds (MRBs) have greatly facilitated the sale of RTC affordable properties. The RTC has focused on purchasing commitments from states with a large inventory of RTC residential properties. The sale of RTC-held properties to qualified purchasers is important in those states as a source of new tax revenue. The reduction in the supply of RTC and other foreclosed properties will also serve as stimulus for the private production of new construction for housing by area builders only after the inventory of vacant housing is depleted.

The RTC has indicated to the Oversight Board the success of the MRB programs in meeting the objectives of the affordable housing disposition program. The MRB loan commitments purchased to date have 12 to 18 month commitment periods. Most attention has been placed on putting $189 million MRB financing in place in states where the financing is needed.

RESPONSE TO WRITTEN QUESTIONS OF SENATOR KERRY FROM

TISH GONZALEZ

Hearing on RTC Asset Disposition - September 13, 1990

QUESTION:

(1) Properties qualify for the affordable housing inventory on the basis of appraised value. But, state agencies are apparently finding that many appraisals on properties in the RTC's inventory are extremely outdated, some even dating before the economic downturns that contributed to savings and loan failures. Does this mean that many properties that should be in the affordable housing inventory may never get there because of age and therefore, inflated appraisals?

ANSWER: It is the position of the Texas Housing Agency that, due to the outdated appraisals, there are a number of homes which, if currently appraised, would fall into the affordable housing inventory. Understanding that it may not be expedient for the RTC to order new appraisals for all the properties, we believe the situation dictates that those properties which fall close to the maximum $67,500 value cap should be put into the affordable housing inventory.

In Texas, where the real estate economy has taken a harder fall than in other states, we believe that there would be a substantially greater number of properties which would be affected by current and consistent appraisals, and that a greater number of low-income families would benefit by this long overdue adjustment in appraisals.

QUESTION:

(2) One half of all affordable housing properties are located in Texas. Yet, one year after FIRREA was enacted, the Texas Housing Agency is not acting as a clearinghouse. In fact, only 10 agencies are clearinghouses and none of these, with the exception of New Mexico, are heavy RTC Inventory states. What accounts for this? Is obtaining adequate compensation for clearinghouse activities still an obstacle?

ANSWER: It does appear that the issue of adequate compensation is not a main concern for states which do not have a large RTC inventory; however, merely stating that adequate compensation in and of itself is a major negotiation hurdle is a misleading assumption. In the Texas Housing Agency's case, we were, and are, satisfied that compensation simply include the cost of overhead, staff, photocopying, postage and all other expenses relating to the role of information dissemination. RTC appeared willing to provide that compensation, **but based only on their proposal, which was, in accordance with our vast experience and knowledge in this area, woefully inadequate.**

The RTC also refused compensation unless we concurrently agreed to serve as a Technical Assistance Advisor (TAA). It is our belief that the role of the TAA, which would demand more aggressive marketing of RTC properties by agencies, is 1) not clearly defined; and 2) best served by those already providing those services in the private sector. As stated by this agency previously, we are interested in fulfilling our mission of providing safe, sanitary and decent housing, and not in trying to compete with the private sector.

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Timothy P. Hartman
Chairman

NCNB
Texas

October 1, 1990

Honorable Donald W. Riegle
Chairman
Committee on Banking, Housing and Urban Affairs
United State Senate
Dirksen Senate Office Building
Washington D.C. 20510

Dear Mr. Chairman:

Thank you for the opportunity to testify before your Committee on Banking, Housing and Urban Affairs on September 13, 1990.

As requested, I have attached minor corrections to my remarks for inclusion in the hearing record. In addition, Senator D'Amato asked for a written summary of the meeting we were to have the next day with officials of the Resolution Trust Company. In particular, Senator D'Amato was interested in the response by the RTC to our suggestions concerning asset disposition.

That meeting was held on Friday, September 14, at RTC headquarters. RTC officials Lamar Kelly and Gary Bowen met with James Erwin and Theodore Samuel of our collecting bank, Financial Resource Management, Inc. Mr. Erwin is president of FRMI, and Mr. Samuel is executive vice president.

The meeting covered several significant suggestions relating to the RTC disposition effort. Our suggestions are listed below, together with the response from the RTC.

- Loan Restructuring -- Restructuring of loans should be considered as opposed to collection through foreclosure and liquidation. The standard asset management and disposition agreement (SAMDA) used by the RTC gives incentive payments only for cash collections. This drives the managing contractor to give only very limited consideration to restructure. We suggested that restructures be compensated under the SAMDA agreement.

  RTC Response -- The RTC is already aware of this problem and is attempting to modify the SAMDA to provide incentives for valid restructure.

- SAMDA Qualifications -- FRMI raised the issue that collection through the current SAMDA bid approach does not take into consideration the most important net recovery element in determining the true bid cost. The bid process emphasis on lowest administrative costs and disposition fee gives no weight to the quality of the work performed or the expected collection results. Simply put, in hiring a collection manager the RTC will get what it pays for. The SAMDA emphasis on low bids provides the incentive for the contractor to bid low, manage with a minimal staff, collect the large and easy assets and ignore the smaller, difficult and unproductive assets. FRMI believes this is not in the taxpayers' best interest and suggested changing the SAMDA process to provide a significant weighing factor for the size and collection competence of the collection organization.

RTC Response -- The RTC seemed to acknowledge this difficulty but had not determined how to factor it into the SAMDA process. They did relate that in the future they were considering setting the monthly administration fee at a fixed amount for all bidders. This would possibly simplify the approval process. Combined with an organization weighting, this would provide a potential solution.

- Financing -- In an extended discussion, FRMI suggested that the RTC should provide financing through direct lending or loan guarantees for the sale of its REO assets to facilitate difficult asset sales. The financing is specifically intended to facilitate sales; therefore, loan underwriting in the normal sense would not be applicable and would be counterproductive. We believe real estate prices will deteriorate substantially without financial credit being available. Virtually all traditional institutional sources of real estate credit are under attack, and real estate markets are dependent on credit.

FRMI suggested that NCNB would be willing to consider up to one billion dollars in financing for RTC OREO sales. The commitment would require government guarantees of principal and modest interest. FRMI acknowledged that while guarantees are not necessarily desirable, in these instances, however, guarantees would not increase the government's liability because the government already has all of the liability associated with the real estate financing. FRMI suggested that it could deliver a commitment letter to the RTC if requested. The FRMI role would be to relieve the RTC of the loan origination, administration and servicing with an incentive to maximize collections.

RTC Response -- The RTC is seriously considering financing or "enhancing" other institutional financing asset sales. The RTC desires the transfer of loan risk to the lender, if possible. FRMI's position is that this is counterproductive to the sales and collection effort. The issue was left open with the RTC studying the FRMI recommendation.

- Bulk Sales -- FRMI has consistently suggested to the RTC a financed pool approach to asset disposition as the plan with the greatest prospect for success. The pool purchase plan incorporates a market bidding procedure based on an appraisal formula which determines the pool price. The due diligence to determine the formula price is performed in a 12-month period following closing. Assets are sold immediately, the RTC provides financing which reduces investors downside risk, the RTC shares heavily in upside profit, and the equity purchasers have parallel incentive to those of the RTC.

This program, if approved by the RTC, would move largepools of assets rapidly. FRMI suggested a step-by-step implementation plan.

RTC Response -- The RTC has given the bulk, or pool, sale approach significant staff support. There is agreement that a plan calling for post-purchase due diligence is most likely to succeed. Provided organizational structure and staff size issues can be overcome, the RTC plans to proceed.

- Streamline RTC SAMDA Contract -- FRMI suggested that the SAMDA contract be streamlined to remove unnecessary, complicated and counterproductive elements. Specifically, these include, but are not limited to, and the difficult RTC indemnification provision, the complicated fee structure which is based on Economic Recovery Values greatly in excess of appraised values and collection approval requirements.

  RTC Response -- The RTC plans to meet quarterly to consider changes to the SAMDA contract. Changes under consideration include the items mentioned by FRMI.

The meeting left several issues open for further study. We were encouraged by RTC acknowledgement of the matters we raised and the willingness displayed to continue to work toward their resolution. We have continually stressed to the RTC that the most important step to be taken to minimize the taxpayers' cost of the thrift cleanup is to begin work immediately and reward them with more business if they perform well.

Once again, we appreciated the invitation to appear before your committee on the vitally important subject of RTC asset disposition. We remain available to discuss this and other relevant topics with you and the other Committee members.

Sincerely,

Timothy P. Hartman

attachment

Tucker Anthony Incorporated
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Tucker Anthony

Room E40-253
Massachusetts Institute of Technology
Cambridge, MA 02139
September 13, 1990

Mr. Chairman, Members of the Committee,

Thank you for the opportunity to submit testimony concerning the subject of U.S. competitiveness to the Senate Banking Committee.

My name is Charles H. Ferguson. I currently have three professional roles: I am a postdoctoral research associate at MIT; I am an independent consultant to high technology companies and investors; and I am a senior technology advisor to the investment banking firm of Tucker, Anthony in Boston.

For the past five years, I have concerned myself with the subject of international competition, particularly in technology-intensive industries such as semiconductors, computers, software, and telecommunications services. I have also, to some extent, been involved with studies of the automobile industry, the defense industry, and several financial services sectors. The subject of my Ph.D. thesis as M.I.T., for example, was Japanese-American competition in the semiconductor and computer industries. I am currently writing a book on American economic decline and its implications for corporate strategy, investment behavior, and for the future welfare of the United States as a nation.

In addition, I have served as a consultant to many multinational firms concerned with these issues -- including Digital Equipment Corporation, Intel, Siemens, and Xerox. I have consulted to a variety of U.S. government organizations and policy analysis efforts, including the Defense Manufacturing Board, the National Science Foundation, and the National Advisory Committee on Semiconductors. I also currently am involved in investment banking activities related to high technology industries, such as efforts to assess technology stocks and investment opportunities, and also to provide advisory services to firms interested in strategic alliances.

As a result of these various activities, I have a somewhat unusual opportunity to observe and participate in a wide array of private sector behavior, as well as an academic role in generalizing about the issues of international competition and the United States' position in this competition.

American Competitiveness

My conclusion, based upon these observations and my conversations with other experts in the same areas, is that the United States has already lost its position as the leading financial, industrial, and technological nation to Japan; that U.S. decline is continuing and perhaps accelerating; that the United States government continues to behave in a complacent and often counterproductive manner with respect to U.S. economic performance; that most of the problems associated with U.S. competitive decline are the result of dysfunctional U.S. government policies; that in addition, Japan continues to have unrestricted access to U.S. technology and markets, while also continuing to behave in a one-sided and often predatory manner towards other nations; and that the consequences of continued U.S. decline will, within five to ten years, prove devastating to the economic welfare and national security of the United States.

U.S. industries likely to suffer severe decline or, in some cases, to effectively disappear over the next decade include several that were until recently considered to be the strongest in America, and which are also in some cases absolutely critical to future industrial performance. For example, the U.S. semiconductor capital equipment, semiconductor, and computer industries are already in grave trouble, and are likely to suffer fatal damage over the next several years.

If this seems overly extreme, I would simply point out that foreign banks already hold about 30% of the U.S. commercial loan market; that the world market share of the U.S. semiconductor industry has declined from 60% to 35% in the last ten years, and continues to decline; that the U.S. is now a net importer not only of oil, cars, and steel but also of numerically controlled machine tools, semiconductors, computers, telecommunications equipment, consumer electronics, and office equipment; and that last year, the nation of Japan invested more in plant and equipment than the United States in absolute terms -- i.e., twice as much on a per capita basis. Coupled with U.S. deficits and the deteriorating position of the U.S. financial system, this decline in industrial performance is having an enormous effect upon the future condition of the country.

High Technology and the U.S. Financial System

The position of the U.S. financial system, and its weak position relative to that of Japan's, are issues of particular concern to U.S. high technology industries for several reasons.

First, high technology is capital intensive, even when it uses little physical capital equipment and even more so when it uses expensive factories. High technology industries require large expenditures for R&D long before commercial sales, with the result that the time horizons and competitiveness of firms are extremely sensitive to the cost of capital they face. The U.S., it is generally agreed, has severe disadvantages relative to Japan as a consequence of our low savings rates, our tax favoritism for consumption over investment, the short time horizons of institutional investors, and the structural fragmentation of the U.S. financial system relative to more concentrated foreign competitors.

Secondly, high technology industries are major inputs to financial services. IBM's largest customer, worldwide, is Citicorp; and financial services firms probably account for at least one-fifth of the U.S. business computer market. If the U.S. financial sector weakens, the result is less demand for U.S. information technology. Moreover, Japanese finance has much closer links to its domestic technology sector, by virtue of the structure of the Japanese economy. The result is that Japanese financial services institutions tend to buy Japanese information technology products, while also gleaning further knowledge of the sector itself by virtue of these major customer relationship.

And finally, Japanese financial services firms often serve an informal but critical role as consultants and advisors to Japanese industrial firms, a role difficult to replicate in the U.S. environment, where relationships are short-term and tend to involve unnecessary competitive duplication. For example, Japanese financial firms own equity positions in a variety of U.S. investment banks, advisory services firms, and venture capital funds, and thereby assist Japanese companies in obtaining access to U.S. technology, personnel, and distribution channels.

Altogether, then, it has become increasingly necessary for me to advise my investment banking and consulting clients to avoid commitments to areas in which Japanese firms are making major efforts, and/or in which I know that U.S. technology and financial resources are already outclassed by Japan. This detailed, firm-level strategy conclusion is reinforced by my academic and policy research, which make it increasingly clear that the United States is simply unprepared for the advent of the information age. If the United States continues on its present course, it would be no exaggeration to say that over the next twenty years, the U.S. will come to resemble an underdeveloped country such as Argentina more than it will resemble the most advanced economies in the world as exemplified by Japan, Germany, Singapore, and other nations.

Common Sense

I will conclude by submitting a draft position paper of an organization still in formation, founded by myself and a group of more senior analysts of U.S. and international industrial competition. The group, and the initial position paper, are called "Common Sense" -- because that is all they are. It does not take a brilliant mind to see what is happening to America. But it will take enormous willpower and resolve to reverse it.

Thank you.

COMMON SENSE - 1990

1. The undersigned are Americans whose careers have placed them in the mainstream of the U.S.–Japan relationship over the past twenty-five years, and who are seriously concerned over recent developments in that relationship. We believe:

   - That the United States has lost to Japan the industrial leadership of the world, and that the price of that loss, in terms of the current and future quality of American life and national self-esteem, is unacceptable to the majority of Americans;

   - That the principal cause of that loss has been the failure of the United States to keep pace with Japan in (1) industrial productivity and (2) effectiveness of government - most notably, but by no means exclusively, in the area of industrial policy;

   - That, although Japan is without question among our most valuable political allies, it is, at the same time, our strongest and most aggressive industrial competitor, and that U.S. failure to cope with this paradox has been, and continues to be, a major strategic weakness in American policy;

   - That Japan, as the new global industrial leader, is not only our most formidable competitor, but is, in fact, the only other power capable of challenging the U.S. for global industrial leadership. Japan, accordingly, must be the standard by which we measure our performance.;

   - That the U.S. decline was preventable, and is now reversible, well within the established framework of American democracy. However, reversing it will require dramatic improvement in both the effectiveness of American policy and the quality of our political leadership;

   - That the incumbent leaders in both parties have demonstrated neither the vision nor the motivation to initiate the necessary changes. Those changes must be mandated by an enlightened, determined electorate or they will not occur;

   - That our political leaders and the media have not conveyed to the American public either the nature or the magnitude of our national decline, and, accordingly, that the most pressing current need is not for more policy prescriptions, but rather for a mechanism to take the problem forcefully to the people. The solutions, in our view, will be not only manifest, but attainable, when the problem itself has been clarified in the public mind.

Biographic Summaries: Common Sense

Bruce R. Scott

Bruce R. Scott is the Paul W. Cherington Professor of Business Administration at the Harvard Business School. His major area of interest is the impact of public policy on the business environment. From 1963 to 1968, he lived in Europe and researched the French system of industrial planning. In 1972 he was appointed to head the required MBA course: "Business, Government, and the International Economy". His most recent work centers on the competitiveness of the U.S. economy. His books are: Industrial Planning in France (with John McArthur), U.S. Competitiveness in the World Economy (with George Lodge). He is currently at work on a sequel on U.S. industrial competitiveness.

Alan M. Webber

Alan M. Webber is Managing Editor of the Harvard Business Review. He was named a fellow of the U.S.–Japan Leadership Program in 1988, and recently returned from a three–month stay in Japan, where he met and discussed issues with the next generation of Japan's leaders. His columns and articles have appeared in a number of national publications, including The Los Angeles Times, The New York Times, The New York Times Sunday Magazine, and The Washington Post. At The Harvard Business Review, he has contributed a series of interviews with former heads of state, titled "The Statesman as CEO", and has written on such topics as leadership and global competition. He is also co–author of Changing Alliances, a recently published book on the competitive future of the American auto industry in the global economy. Previously, he was Special Assistant to then Secretary of Transportation Neil Goldschmidt.

William V. Rapp

William V. Rapp is Vice President, Mergers, Acquisitions and Finance, Mitsui Nevitt Capital Corporation. A specialist in corporate finance and cross–border transactions, Dr. Rapp served as Executive Director and General Manager of Corporate Finance in Japan for Bank of America from 1985 until June, 1989. Immediately prior to that, he had been appointed to a two–year tour as Minister Counselor for Commercial Affairs in the U.S. Embassy in Tokyo. Previously, he held senior positions with the Morgan Guaranty Bank in the U.S. and Japan, and with the Boston Consulting Group. Dr. Rapp has been the Toyota Visiting Professor of International Business at Columbia University, and has taught at Yale and NYU. His publications include: Competitive Development of the Japanese Automobile Industry, Strategy Formulation and International Competition, Japan's Industrial Policy, and numerous others.

Charles H. Ferguson

Charles Ferguson is an independent consultant, specializing in corporate strategy, computer technology and product strategy, and in electronics market analysis, serving clients in both the public and private sectors. In that capacity, he has advised the National Security Council, the Defense Manufacturing Board, the White House Science Council on semiconductors, U.S Trade Representative, World Bank, and major corporations in the U.S. and Europe. He is currently a Postdoctoral Research Associate at the M.I.T. Center for Technology, Policy, and Industrial Development, and has been on the staff of the M.I.T. Commission on Industrial Productivity. He is currently writing a book on comparative corporate strategy, national industrial systems, and global competition in higher technology industries, emphasizing information technology sectors.

Biographic Summaries: Common Sense (Cont.)

Ezra F. Vogel

Ezra Vogel is Clarence Dillon Professor of International Affairs at Harvard University, and is a specialist on modern Japan and China. He was Director of Harvard's East Asian Research Center 1972–77, and Director of the Program on U.S.–Japan Relations at the University's Center for International Affairs from 1980–87. He was on the faculty of Yale University in 1960–61. His book, based on several years' work on China, Canton Under Communism, won the Harvard University Press faculty Book–of–the–Year award in 1970, and the Japanese edition of his 1979 book Japan as Number One is the all–time best seller in Japan of non–fiction by a Western author. In 1987 he was invited by Guangdong Province (population 60 million; capital, Canton) to do a study of that province since reforms began in 1978. The results are reported in One Step Ahead in China: Guangdong Under Reform. His current research focuses on the factors making for East Asian success and the challenge of East Asia for Western society.

William L. Givens

William Givens is President and founder of Twain Associates, a Boston–based consulting firm specializing in U.S.–Japan trade and investment matters. Previously, he was a consultant with The Boston Consulting Group, and served for five years as Special Assistant to Admiral H.G. Rickover, U.S. Atomic Energy Commission. From 1957–66 he was a language and area specialist (Japan) for the U.S. Department of State, serving for seven years in the U.S. Embassy in Tokyo. He is currently a Director of The Japan Fund, and formerly Director and Chairman, Policy and Planning Committee, Simplex Time Recorder Co. He was a member of the 1982 President's Private Sector Survey on Cost Control (Grace Commission), and led the team that evaluated the International Trade Administration, Department of Commerce. He is active as a speaker and writer on the public policy aspects of U.S.–Japan trade, and his articles on these subjects have appeared in Fortune, Business Week, The Washington Post, The Boston Globe, and other publications.

Resolution Trust Corporation's response for the record to questions asked during the Hearing on the Real Estate Asset Disposition Activities of the Resolution Trust Corporation before the Senate Committee on Banking Housing and Urban Affairs, September 13, 1990.

Response to Chairman Riegle's question on page 12:===(p.5)

Commercial real estate in our inventory located in Texas accounts for 51% of the total number of assets listed representing 65% of the gross book value of all assets held by the RTC.

Response to Senator Graham's question on page 44:===(p.45)

The Ombudsman's Office may be contacted at the following address:

Ombudsman
Office of the Executive Director
801 17th Street, N.W.,
Washington, D.C. 20434
(202) 415-7470

Our sales centers also serve as inquiry centers. Staff at the regional and consolidated cites is able to assist citizens with obtaining information on the RTC. We have enclosed telephone and address information for our sales centers for your review.

Response to Chairman Riegle's question on pages 54 - 55:===(p.49)

The Contractor Surveillance and Enforcement Unit will be established within the Asset and Real Estate Management Division to investigate and monitor the RTC asset disposition process, particularly as it is implemented among the private sector contractors. This will be the safeguard mechanism along with the Oversight Manager Program. We have enclosed for your review a copy of the Oversight Manager Program Directive for your review.

In order to ensure that the fitness and integrity of contractors engaged to perform services is satisfactory and to minimize the possibility of hiring contractors who are otherwise involved in illegal activities or are under investigation, the RTC requires additional certifications and background information when proposals are submitted. This requirement is over and above the self-certifications provided when a firm requests registration. Prior to awarding a contract, the RTC's Office of Investigations conducts a background check to verify these certifications.

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(504) 769-8860

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Burnsville, MN 55337
1-800-338-8098
(612) 894-0800
Donaldson V. Wickens, Coordinator

Elk Grove Village Sales Center
25 N.W. Point Boulevard
Elk Grove Village, IL 60007
1-800-526-7521
(708) 806-7750
Tom Marvinac, Coordinator

*This office will move effective August 1990 to: 3400 Yankee Drive
Eagan, MN 55122
(612) 683-0036

SOUTHWESTERN REGIONAL SALES CENTER

300 North Ervay, 24th floor
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1-800-933-4RTC
Lowell Peterson, Coordinator

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10000 Memorial Drive
Houston, TX 77024
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Kurt Schwenkel, Coordinator

San Antonio Sales Center
601 NW Loop 410, 9th floor
San Antonio, TX 78216
(512) 524-4713
Billie Colbert, Coordinator

Tulsa Sales Center
4606 South Garnett Road
Tulsa, OK [illegible]146
1-800-456-[illegible]2
Burton McNeil, Coordinator

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(602) 224-1799
Richard Sinagoga, Coordinator

Costa Mesa Sales Center

1901 Newport Boulevard
Costa Mesa, CA 92627
(714) 631-0582
Micah Leslie, Coordinator

RTC
Resolution Trust Corporation

DIRECTIVE SYSTEM

TYPE AND NUMBER
Circular 10100.6
CONTACT
Gary Bowen
TELEPHONE NUMBER
202-416-7584
DATE
November 28, 1990
DATE OF CANCELLATION (Bulletins Only)

To: RTC Regional Directors

From: Lamar C. Kelly, Jr., Director
Asset and Real Estate Management Division

Subject: Oversight Manager Program

1. Purpose. To establish a comprehensive program by which the Oversight Manager (OM) will monitor and review the activities and performance of the Asset Management Contractors (AMC's), primarily in regard to assets assigned under the Standard Asset Management and Disposition Agreement (SAMDA).

2. Scope and Applicability. This Directive applies to all RTC Offices; i.e., Regional, Consolidated and Field.

3. Background. Pursuant to the June 22, 1990 "Role of the Oversight Manager" memorandum (see Appendix A), the designated OM for each SAMDA will use nine basic vehicles to govern AMC's. Each of the nine vehicles referenced in the memorandum is described herein, complete with instructions and guidance for program implementation.

4. Procedure. Through application of this nine point OM program, the OM will:

a. Carry out his/her responsibilities to ensure that AMC's are effectively managing and disposing of assets with maximum return to the RTC.

b. Cooperate fully with AMC's to ensure that they fulfill their responsibilities under the SAMDA.

c. Ensure that AMC's are consistently and effectively carrying out their responsibilities in conformance with RTC policies and procedures.

d. Identify positive performance attributes, as well as promote correction of performance deficiencies, in relation to each AMC meeting their asset management and disposition responsibilities.

e. Provide follow-up to site visits, visitations and audits in order to ensure that deficiencies are corrected or acted upon and, if necessary, will make recommendations for disciplinary actions when an AMC fails to conform to RTC policies and procedures.

5. Responsibility and Action. It is the responsibility of the Regional Directors to ensure that all personnel designated as an OM will be provided appropriate and adequate training in order to ensure that all AMC's within their respective Regions are appropriately and consistently monitored in accordance with this Directive. The Regional Directors will be responsible for designating Career Development Specialists who will have primary responsibility for overseeing the coordination of this training function.

6. Effective Date. This nine point OM Program will be effective immediately.

Case Processing and AMDPs:

Asset Marketing:

Compliance with Contracting Policy and Procedures:

Staffing and Organizational Issues:

....

Visitation Results: Satisfactory Marginal Unsatisfactory
(circle one)

Comments:

....

Acknowledgements of Receipt:

Oversight Manager:______________________________ Date:__________

Director (CFO):______________________________ Date:__________

AMC:______________________________ Date:__________

I. STANDARD ASSET MANAGEMENT AND DISPOSITION AGREEMENT

The responsibility of the OM begins no later than at the time the contract is executed. If the organizational structure within the office permits, the OM should participate in the pooling of assets for the contract, in the technical analysis of the bidders as a part of the selection and engagement process, and in discussions prior to the award of the contract with the appropriate Interim Servicer, Financial Institution Specialist, or Specialist in Charge regarding issues that need to be addressed during the transition period. If a contract is very large, it may be necessary to create an oversight team, with each team member having specific areas of responsibility. One individual (or member of the oversight team) will be designated as the OM with overall responsibility for the oversight of the contract.

Once the contract is executed, the OM is responsible for reviewing and discussing the following items with the AMC to ensure a full understanding by both parties.

- **Review of the Contract Terms:** In addition to the terms of the "standard" contract, the OM needs to be aware of any addendum or other changes which were required for the particular contract he/she is overseeing. In addition, since SAMDA has been and will continue to be modified and improved, the OM must review the actual executed contract to verify the terms. Blanket assumptions as to the contents and provisions cannot be made.

- **Delegations of Authority:** The OM is responsible for ensuring that the Delegations of Authority for the AMC are prepared and issued by the Regional Director. Some Solicitations of Services (SOS) are prepared on the basis that only an interim level of delegated authority is to be issued until after submission and review of the Preliminary Business Plan. Other SOS's are prepared on the basis that the full level of delegated authority to the AMC is to be effective at the onset of the contract.

- **Index of Reports:** See the Reporting Requirements section of this program for a complete listing of reports required from the AMC as reflected in SAMDA. The OM is responsible for providing this list of required reports to the AMC and advising of the due dates. There should be no misunderstanding as to when RTC will receive the required reports. The first due dates should be scheduled to correspond with the first full calendar month after the effective date of the contract. Reports that may require the special attention of the AMC because of impending call dates or that will require significant effort in the near term should be identified and discussed. Many reports may have been automated, in which case the OM would provide the AMC with appropriate disks or other available programs.

- **Transition Period:** Much of the success of the AMC, especially in the early stages of the contract, will depend on the start up period. The OM, in conjunction with the Interim Servicer, Financial Institution Specialist, Specialist in Charge (or others currently responsible for the assets), must coordinate the shift of responsibility. Areas that should be discussed are payment processing, data processing, movement of credit files and other documentation, responsibility for official records (whether in control of the AMC or others), previously approved actions currently pending (provide the AMC with copies of approved pending cases and/or the Quarterly Reports on Case Activity for prior quarters relative to the Receivership involved), etc.

- **Training Needs:** A vital responsibility of the OM is to identify the areas of policy and procedural training needed by the staff of the AMC. This will vary significantly depending on the organization of the AMC, whether the AMC has previously worked for the RTC in similar capacities, and the nature of the assets. The OM should be familiar with existing training modules that may exist within the RTC and determine availability with the Career Development Specialist of their office. If appropriate training modules do not exist, the OM should consult with their Career Development Specialist, as well as other appropriate staff members to determine the most cost effective and timely method of providing the needed training. It is envisioned that the OM will participate to a great extent in the training process.

- **Lines of Communication:** Lines of communication must be established for both the AMC's staff as well as the RTC staff. While the OM is by design the official source of RTC communication, at times it may be appropriate for other individuals within the office to be identified as the proper contact for specific types of information. The OM should insure that both the AMC and other RTC employees involved understand their relative role in the lines of communication. Most important will be an understanding by all parties of the proper scope of the relationship between the AMC and RTC personnel other than the OM. The AMC cannot be put in the position of receiving conflicting direction and/or information from various sources.

The AMC should also designate a primary contact that is responsive to and available to the OM. This counterpart should have responsibilities that closely tie to those of the OM. The OM should also identify the lines of accountability within the AMC's organization. This can be accomplished through the information provided in the Preliminary Business Plan (Refer to Business Plans section of this program).

- **Operating Accounts:** The OM will coordinate the opening of all required operating accounts with DACS and the AMC. Refer to SAMDA Attachment 2-10. Part of this function is to ensure that the initial funding required to be provided by the RTC is placed in the AMC's Operating Account. The amount of the initial funding to be placed into the operating account should have been stated in the case memorandum which approved the award of that particular contract. Generally, the amount should be adequate to allow the AMC sufficient funding to cover operating and liquidation expenses for a two to three month period in order to avoid emergency funding needs during the initial period. RTC approved operating budgets for related asset types may be used as a basis for determining the appropriate level of funding required. Thereafter, and on an ongoing basis, a critical function of the OM is to review the monthly cash flow reports to verify the monthly funding requests of the AMC in relation to the approved operating budgets. As additional funds are required, arrangements will have to be made with the DACS Chief Financial Officer in order to ensure that the funds are available in a timely manner.

- **Official Oversight Record:** The OM will be responsible for maintaining a centralized record that reflects the status and results of the oversight function for the contract. Included in this record will be a summary of all official correspondence with the AMC, Preliminary and Final Business Plans, Site Visit and Visitation Program evaluations, DOAs, POAs, Indemnities, etc. Copies of reports, work sheets, work papers, individual AMDPs etc., are to be maintained separately. While this Official Oversight Record should be maintained in the central record/file area of the office, the OM is responsible for it being maintained in a complete and up to date manner.

- **Power of Attorney:** Generally, a very limited number of specific individuals within the AMC's staff will be issued a limited Power of Attorney (POA). The OM should review the appropriateness of those selected, giving consideration to their seniority and position. Director (CFO) approval of those individuals must be received. The OM will ensure that the proper POA is drafted and submitted to the appropriate RTC official for execution. The POA must be tracked, reported and rescinded in accordance with RTC policy.

Because of the time required to process and issue a POA, there will likely be some time lag between the effective date of a contract and receipt of the POA. In the interim, the OM will have to identify and arrange for appropriate individuals within the office who have a POA to execute documents requiring an official signature until the AMC has the legal authority to do so.

- **Legal Capacity:** The OM should verify with RTC Legal the proper legal capacity of the AMC and any other statutory requirements. Specific written instruction should be provided on how the AMC is to reflect his capacity on general correspondence and official documents executed in carrying out the duties.

- **Insurance Policies and Indemnifications:** While the Contracting Department should have received all of the original policies from the AMC as required by SAMDA (i.e., Errors and Omissions, Fidelity Bond Coverage, etc.), the OM should verify that all items, as required, have been received. If they have not, the OM should take the necessary steps to assure that they are received on a timely basis. Likewise, if RTC has agreed to provide either Receivership or Corporate Indemnity to the AMC, the OM should ensure that the proper indemnification is issued.

II. BUSINESS PLANS

Time is of the essence in the AMC's submission of Business Plans, and unless a written extension of time is obtained from RTC, the AMC's failure to meet the deadlines shall constitute a material breach of the SAMDA. Such a material breach requires that written notification be provided to the AMC from the Director (CFO).

The Preliminary Plan

Submission: The AMC is required to submit the Preliminary Plan within thirty (30) days of executing the contract. In narrative form, the Plan will address the following topics:

a) Schedule of dates for AMDP delivery,

b) Estimated interim budget for the initial ninety (90) days of the contract,

c) AMC's plan for delegating authority for expenditures and decision making,

d) Staffing (levels, hiring status),

e) Other requirements as may be required in SAMDA Attachment 3-1.

Review:

a) AMDP Delivery Dates: The OM should ensure the AMDP delivery dates are within the ninety (90) day timeframe, or as otherwise required by SAMDA, and that proposed groupings of assets (if applicable) are consistent with RTC policy (refer to Asset Management and Disposition Manual Section IX, discussing AMDP groupings). AMDP's requiring RTC approval will be submitted separately from those provided only for review.

b) Interim Budget: The interim budget should be examined for reasonableness, based on the OM's knowledge of the particular assets, prior experience with that asset type, and/or any RTC approved budget. If the initial funding provided is determined to be inadequate, the OM should initiate a request for an additional advance to the Operating Account.

c) Decision Making Structure: Review the AMC's plan for delegating authority within the organization. A Committee structure for more significant asset actions should be encouraged, with routine matters delegated to lower levels.

d) Staffing: Ensure the number, experience, and hiring status is not only reasonable for the portfolio assignment, but that it is also consistent with information contained in the bid package on which the AMC received the award.

Approval:

After the OM has concurred with the preliminary plan, in writing, it will be delivered to the Director (CFO) for final approval. Once obtained, the approved preliminary plan will be placed in the Official Oversight Record Book (refer to Section I, "SAMDA") with a copy provided to the AMC.

The Business Plan

Components: The AMC's Business Plan consists of all AMDPs in the portfolio and summary information about the pool. Refer to SAMDA Attachment 3-3 for details.

Summary Information: This information is intended to provide the OM with an overview to this pool of assets. Such data as Total Book Value, Total Estimated Recovery Value, Total Estimated Collections, and Total Estimated Expenses, is compiled on the assets in the aggregate. The OM will check this data on a random basis, as deemed appropriate.

Submission: The AMC will deliver the Business Plan once all AMDPs are approved.

Updates: The AMC shall deliver an updated plan on an annual basis, within thirty (30) days of the contract anniversary date, in the format set forth in SAMDA Attachment 3-4. This update provides new summary information on the portfolio, encompassing changes to AMDPs, assets disposed of, and additional assets added after the initial award. The OM should ensure this is received in a timely manner, is in the correct format, and that random samplings of the calculations are correct. Further, the OM should review the updates for reasonableness in comparison to past performance.

III. ASSET MANAGEMENT AND DISPOSITION PLANS (AMDP's)

The AMC and the OM must have a thorough understanding of the AMDP procedures, as outlined in the AMDM, Section IX.

Submission: The approved Preliminary Plan outlined the AMDP delivery schedule. The OM should establish a tickler system detailing Due Dates, Dates Received, Dates Action Required, Dates Action Taken, and Types Of Action Taken. As the AMDP's are received and logged in, the OM should begin the review process. The OM must thoroughly review the AMDP in order to ensure that the recommended strategy represents the best recovery alternative, based on the information available, and that it is adequately justified. Don't expect every AMDP to detail a specific disposition strategy and amount of recovery. Due to the lack of file documentation, the strategy may simply outline information to be obtained and the corresponding timeframes. This strategy however, should also provide for a new AMDP to be delivered once the information has been reviewed.

Generally, every asset with a book value greater than $250,000 will require an individual AMDP, however, as more thoroughly discussed in the AMDM, multiple assets to one borrower or similar type/collateral grouped assets may be more appropriately grouped into a composite AMDP.

Approval: All actions are to be approved in accordance with appropriate levels of delegated authority, whether the action be presented in the form of an AMDP, a case memorandum, or a credit decision log. The AMDP approval process therefore follows an identical path to case approvals. If an AMDP is approved within the AMC's delegated authority, copies of the AMDP will be made available for OM review. If RTC approval is required, and obtaining same will jeopardize the timing of the AMDP approval as outlined in SAMDA, it is the responsibility of the OM to notify the AMC as soon as possible.

Rejection: If an AMDP is rejected, the OM should provide the AMC sufficient information to enable the AMC to prepare a new AMDP. The revised AMDP is due no later than thirty (30) days from notice of rejection.

Monitoring: With an approved AMDP in place, the oversight role intensifies. The AMDP is the benchmark to assess performance and compare results to projections. The OM should pay particular attention to the:

a) projected timing of proposed actions compared to the actual,

b) collection results compared to AMDP's,

c) sales results compared to AMDP's,

d) revenue and expense variance with budget, and

e) adherence to approved strategy

Supplements: Within five (5) business days of discovering information that warrants a revised strategy, the AMC shall submit a new AMDP. The OM is required to review the plan consistent with the aforementioned timeframes. In these circumstances, the OM should pay close attention to the cause(s) for the revised strategy and a determination should be made whether or not the AMC played a role in necessitating the revision.

Case Writing

Most actions should be approved by the AMDP. However, a case memorandum may be required to consummate a transaction not authorized in the AMDP, for emergency actions, or to otherwise amend an approved AMDP. In these instances, the case or amended AMDP will follow the normal channels and be approved under the proper delegated authority. The AMC and OM will require a thorough understanding of case writing, as discussed in the AMDM Section VII. As in all circumstances, the proper format is important but should not override timely processing of the prudent decision.

IV. REPORTING REQUIREMENTS

Under the SAMDA, the AMC is required to submit a number of reports. It is the role of the OM to monitor the submission of these reports, review them, facilitate delivery of reports to other RTC areas (i.e. Asset Operations, DACS, Contracting, etc.), and provide assistance to the AMC when necessary.

The OM should utilize this checklist to monitor the AMC's performance with respect to reporting functions. It will be necessary to identify if any additional reporting requirements are unique to a particular SAMDA.

Performance:

- Reports are received in a timely manner

- Reports received are in acceptable format

- Content of reports have been reviewed and signed off by contractor's senior management prior to submission

- Reports have been reviewed for:
    1. Appropriateness of content
    2. Proper compilation
    3. Management input
    4. Management follow-up

- Contractor reported data reconciles to FIS/General Ledger

- Discrepancies/Variances have been fully explained by contractor

- Established reporting goals/objectives as defined in SAMDA/Business Plan are being met

- Reports are distributed to appropriate parties (i.e. management, accounting, contracting)

Review:

The OM is to review reports, draw comparisons to previous submissions, and comment on trends. (Refer to section on Contract Review Meetings for further guidance on measuring performance of contractor). In addition, the OM has specific responsibility for the following asset related reports:

- ECR Data:
  1. Has been reviewed for reasonableness, and subsequent entry to ECR data system
  2. Estimates are consistent with approved AMDPs and credit policies/procedures
  3. Is supported by appropriate file documentation
  4. Projections are compared to cash collection reports

- Appropriate RTC personnel (DACS, Asset Operations, etc.) reconcile the following accounting reports:
  1. Cash receipts to G.L. accounts
  2. "Due To" accounts to G.L. accounts
  3. G. L. accounts accurately identify asset/collections of contractor

- Delegations of Authority reports:
  1. Reflect actions taken under appropriate delegation
  2. Actions taken are within the authority of existing delegations
  3. Credit Decision Log is being utilized to maintain a record of all actions not requiring case or AMDP approval

  NOTE: Refer to Delegations of Authority section for further guidance.

- Offers to Purchase Log:
  1. All offers to purchase are recorded and ticklers maintained to insure responses are sent within five (5) business days of receipt (in no case later than 30 days after receipt in accordance with AMDM V-E-7).

- Sales Transactions Reports:
  1. Assets have been identified and removed from overall inventory ~~(asset~~ listing) of assets under contract
  2. Disposition fees have been calculated and appropriate actions taken to ensure compensation follows
  3. Prices obtained were commensurate with approved AMDPs

- Asset Inventory Reports:
  1. Inventory reports have been completed properly and numbers reconciled to original listing of assets identified under SAMDA, adjusted for subsequent sales and/or addition of assets

2. **Assets have been properly stratified to allow for asset disposition under existing RTC guidelines for marketing, competitive bidding and sale of assets.**

- Collection Reports:
  1. **The OM should compare actual collection results with projected recoveries and** discuss significant variances with the AMC and the Director (CFO).

Reports other than those identified in the SAMDA, its attachments, and the AMDM are not to be requested of the contractor unless approved in advance by the Regional Director. If additional reports are requested, attach a schedule identifying the report by title, provide description, reason for report, date requested, date due, and name of individual requesting information.

The above checklist should be utilized to prepare for site visits with the AMC and may be the catalyst for determining the need for a full visitation or audit request.

Monthly Reports

Management Reports:

Statement of Operating Collections and Disbursements for All Assets Under Contract (Att. 3-7A)

Statement of Sales Proceeds Collected for All Assets (Att. 3-7B)

Sales Transaction Report for Each Real Estate Owned Asset (Att. 3-7G)

Sales Transaction Report for Each Loan or Other Asset Sold (Att. 3-7H)

Operating Collections and Disbursements for All Real Estate Owned (Att. 3-7C)

Operating Collections and Disbursements for Each Real Estate Owned Asset (Att. 3-7E)

Operating Collections and Disbursements for All Loans and Other Assets Managed (Att. 3-7D)

Operating Collections and Disbursements for Each Loan, Loan Summary or Other Asset (Att. 3-7F)

Accounting Reports:

Summary of Operating Collections and Disbursements by Institution/Subsidiary for All Real Estate Owned (Att. 3-7C)

Summary of Sales Proceeds Collected for All Assets Summarized by Institution/Subsidiary (Att. 3-7B)

Sales Transaction Report for Each Real Estate Owned (3-7G)

"Non Cash" Transaction Report for Real Estate Owned (3-7I)

Summary of Operating Collections and Disbursements by Institution/Subsidiary for all Loans and Other Owned Assets (Att. 3-7D)

Sales Transaction Report for Each Loan or Other Asset Sold (Att. 3-7H)

"Non Cash" Transaction Report for Loans and Other Assets (Att. 3-7J)

Asset Inventory Reports (Att. 3-7K):

Commercial-Non Real Estate & Consumer Loans

Securities

Loans

Other Real Estate

Subsidiaries

Combined Subcontractor Activities Report for Minority and Women Owned Businesses, Solicitations, and Contractor Awards - (Att. 3-10/11)

Solicitations

Proposals

Award

Log of Offers Received (MEMO 1-15-90)

Quarterly Reports:

Estimated Cash Recovery (ECR) (Att. 3-9A)

Expense to Collection Report (Att. 3-9B)

Asset Stratification Report (Att. 3-9C)

Case Reports (Att. 3-9D)
  Cases Approved Under Delegated Authority
  Credit Decision Log
  Actions Taken Under Blanket Cases

Public Official Telephone Log

Annual Reports

Annual Financial Report (Att. 3-8)

Notice Regarding Acquisition of RTC Assets (Att. 3-12)

Final Report (Att. 3-13)

Summary of Annual Financial Reports

Inventory of Remaining Assets

Record Retention

The following logs have been prepared to assist the OM in monitoring the timely receipt of all required reports. These logs are designed to track reports by reporting groups (i.e., Monthly Management Reports, Monthly Accounting Reports, Monthly Asset Inventory Reports, Quarterly Reports, etc.).

ASSET MANAGEMENT CONTRACTOR: ____________________
CONTRACT NUMBER: ____________________
SITE LOCATION CODE: ____________________

MONTHLY MANAGEMENT REPORTS

____
(YEAR)

REPORT	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
STATEMENT OF OPERATING COLLECTIONS & DISBURSEMENTS FOR ALL ASSETS UNDER CONTRACT												
STATEMENT OF SALES PROCEEDS COLLECTED FOR ALL ASSETS												
SALES TRANSACTION REPORT FOR EACH REAL ESTATE OWNED ASSET												
OPERATING COLLECTIONS & DISBURSEMENTS FOR ALL REAL ESTATE OWNED ASSETS IN CONTRACT (CUMULATIVE)												
OPERATING COLLECTIONS AND DISBURSEMENTS FOR EACH REAL ESTATE OWNED ASSET												
OPERATING COLLECTIONS AND DISBURSEMENTS FOR ALL LOANS AND OTHER ASSETS MANAGED												
OPERATING COLLECTIONS & DISBURSEMENTS FOR EACH LOAN AND LOAN SUMMARY OR OTHER ASSET												
SALES TRANSACTION REPORT FOR EACH LOAN OR OTHER ASSET SOLD												
LOG OF OFFERS RECEIVED												

ASSET MANAGEMENT CONTRACTOR: ______________________
CONTRACT NUMBER: ______________________
SITE LOCATION CODE: ______________________

MONTHLY ACCOUNTING REPORTS

______
(YEAR)

REPORT	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
SUMMARY OF OPERATING COLLECTIONS & DISBURSEMENTS BY INSTITUTION/SUBSIDIARY FOR ALL REAL ESTATE OWNED												
SUMMARY OF SALES PROCEEDS COLLECTED FOR ALL ASSETS SUMMARIZED BY INSTITUTION/SUBSIDIARY												
SALES TRANSACTION REPORT FOR EACH REAL ESTATE OWNED ASSET												
"NON CASH" TRANSACTION REPORT FOR EACH REAL ESTATE OWNED												
SUMMARY OF OPERATING COLLECTIONS AND DISBURSEMENTS BY INSTITUTIONS/SUBSIDIARY FOR ALL LOANS AND OTHER OWNED ASSETS												
SALES TRANSACTION REPORT FOR EACH LOAN OR OTHER ASSET SOLD												
"NON CASH" TRANSACTION REPORT FOR LOANS AND OTHER ASSETS												

ASSET MANAGEMENT CONTRACTOR: ____________________
CONTRACT NUMBER: ____________________
SITE LOCATION CODE: ____________________

MONTHLY ASSET INVENTORY REPORTS

____
(YEAR)

REPORT	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
COMMERCIAL-NON REAL ESTATE & CONSUMER LOANS												
SECURITIES												
LOANS												
OTHER REAL ESTATE												
SUBSIDIARIES												

MONTHLY SUBCONTRACTOR ACTIVITIES REPORT FOR MINORITY AND WOMEN OWNED BUSINESSES, SOLICITATIONS, AND CONTRACTOR AWARDS

____
(YEAR)

REPORT	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
SOLICITATIONS												
PROPOSALS												
AWARD												

ASSET MANAGEMENT CONTRACTOR: ______________________
CONTRACT NUMBER: ______________________
SITE LOCATION CODE: ______________________

______
(YEAR)

QUARTERLY REPORTS

REPORT	FIRST QUARTER	SECOND QUARTER	THIRD QUARTER	FOURTH QUARTER
ESTIMATED CASH RECOVERY (ECR)				
EXPENSE TO COLLECTION REPORT				
ASSET STRATIFICATION REPORT				
CASE REPORTS CASES APPROVED UNDER DELEGATED AUTHORITY CREDIT DECISION LOG ACTIONS TAKEN UNDER BLANKET CASES				
PUBLIC OFFICIAL TELEPHONE LOG				

ASSET MANAGEMENT CONTRACTOR:____________________
CONTRACT NUMBER:____________________________
SITE LOCATION CODE:__________________________

ANNUAL REPORTS

REPORT	FIRST YEAR	SECOND YEAR	THIRD YEAR
ANNUAL FINANCIAL REPORT			
NOTICE REGARDING ACQUISTION OF RTC ASSETS			

FINAL REPORTS

REPORT	DATE RECEIVED	REVIEWED
SUMMARY OF ANNUAL FINANCIAL REPORTS		
INVENTORY OF REMAINING ASSETS		
RECORD RETENTION		

V. CONTRACT REVIEW MEETINGS

The OM and the Director (CFO) are responsible for fostering effective communication between the RTC and the AMC. Effective communication is reinforced during the Quarterly or Semi-Annual Contract Review Meetings with the AMC. These formal meetings should not be confused with the frequent informal site visits and ongoing communications required of the OM. The OM should prepare himself/herself prior to this formal meeting with sufficient work papers and gathered data, to substantiate through examples, any major deficiencies scheduled for discussion. However, this back-up documentation should not be utilized to dominate the meeting nor should it set a tone inconsistent with the desire to promote "effective communication".

The goal of these formal meetings is to communicate with the AMC on the following issues relating to performance, such as:

- Goals and Objectives
- Overall Performance to Date
- Collection Results
- Sales Results
- Quality of AMDP's, Cases, File Documentation
- Compliance with RTC Policies and Procedures
- Any Major Deficiencies or Problems

This is not the time to utilize the detailed visitation program. It is the time to foster effective communication by sharing ideas and information.

After the Quarterly or Semi-Annual Contract Review Meeting has been held with the AMC, a written report highlighting the significant areas discussed, signed by the Director (CFO), shall be given to the AMC. A copy of these reports will be provided to the Regional Director and made part of the Official Oversight Record.

Following is a checklist which may be utilized to prepare for the Contract Review Meeting.

Preparation Checklist:

The following generalized areas should be reviewed in order to discover any potential weaknesses, deficiencies, or problems when reviewed by the OM:

Goals and Objectives:

- **Comparison of actual collections vs projections shown in business plan.**
- **Comparison of actual expenditures vs budgeted expenses.**
- **Comparison of projected sales to actual sales levels being achieved.**

Overall Performance to Date:

- **Adaptability to RTC Policy and Procedure changes.**
- **Utilization and implementation of the AMDP's and the four attachments.**
- **Staffing levels and associated skill levels are consistent with stated goals and objectives.**

Collection Results:

- Depositing functions balanced and monitored daily.
- Appropriateness of work-outs.
- Proper logging of offers received and responses.

Sales Results:

- Contract incentives appear to be reasonable and obtainable.
- Soundness of business decisions.
- Conflicts of interest monitored.

Quality of AMDP's, Cases, File Documentation:

- Modifications to the business plan are properly implemented through revised AMDP's or cases.

- AMDP's and cases are thorough, concise and reasonable.

- Proper use of Delegations of Authority.

- ECRs, ERVs and appraisals reflect proper format and utilization.

Compliance with RTC Policies and Procedures:

- AMDM is being followed.

- Efficiency of reporting and tickler system.

- SAMDA adherence and compliance verified.

Any Major Deficiencies or Problems:

- Obvious disregard for proper documentation of actions taken.

- Lack of supervision by AMC to subordinates.

- Disregard for implementation and utilization of RTC updated policies and procedures.

Performance Measures:

- Comparisons have been made, utilizing the quarterly contractor performance reports received.

- Specific weaknesses and/or areas of exceptional performance have been identified and will be discussed during the Contract Review Meeting.

VI. SITE VISITS AND THE VISITATION PROGRAM

A primary tool of the Oversight Manager in assessing the quality of the AMC's performance is "on site" review of the AMC's facilities and operation. "On site" review can be done through frequent Site Visits, conducted by the OM at the AMC's site, and through a full scope Visitation Program conducted by a team of RTC employees. The overall purpose of both types of reviews is to ensure that the mandate of RTC in the disposition of assets is accomplished effectively and efficiently within RTC policy. This is accomplished through a comprehensive review to document and determine:

a) Compliance with SAMDA, RTC Policy and the Delegations of Authority.

b) Asset recovery is being maximized on a net present value basis.

c) Appropriate controls exist and function to ensure that assets, valuables and records of the RTC are properly safeguarded.

d) Proper corrective action has been taken regarding exceptions noted on previous Site Visits, Visitations and/or Audits.

Site Visits

It is anticipated that frequent informal Site Visits will provide the OM with an opportunity to see first hand how the AMC's operation is doing. In addition, these frequent Site Visits will provide an opportunity for direct communication, which will help foster a solid working relationship between the OM and AMC, as well as provide an opportunity to reemphasize RTC's goals and objectives. This working relationship must always be focused on disposition results and the manner in which the AMC is protecting RTC's interest in the assigned assets.

While it is anticipated that these Site Visits will occur every one to two months, the frequency should primarily be a function of what is required to adequately review the AMC's operation and assess what areas the AMC needs assistance in. The following "itinerary" is provided to assist the OM with conducting Site Visits.

- Meet with the AMC to review purpose and scope of the Site Visit and to discuss corrective action implemented as a result of any previous Site Visits, Visitations, or Audits.

- Review credit decision making process, i.e., attend meetings of the Credit Committee, if such Committee exists and sample actions approved under delegated authority. Assess the quality of the credit decision making process and adherence to the Delegations of Authority.

- Review AMC staffing in order to determine that staffing is in accordance with the Business Plan and appropriate for achieving the stated goal and objectives.

- Assess any training needs that may need to be addressed.

- Conduct follow-up review of any identified exceptions to previous Site Visits, Visitations, or Audits.

- Interview AMC staff in order to assess access to the AMDM and assess the staff's level of understanding of RTC policy and procedural guidelines.

- Review disposition progress on major assets.

Visitation Program

The OM, under the direction of the Director (CFO), has broad latitude in establishing the frequency of the Visitation Program. Issues that should be taken into consideration in determining the proper frequency are the complexity and dollar value of the portfolio, and the experience and performance of the contractor. Visitations should be coordinated with other oversight responsibilities as part of the overall supervision process established for each AMC.

It is recommended that the full-scale Visitation Program be conducted at least annually. Visitations that are more limited in scope, i.e., those that are directed to specific areas of concern, may be held on a more frequent basis, particularly in the initial stages of a contract to establish a clear understanding of what is expected.

> **NOTE:** RTC policy requires that for contracts over $200 million, an annual formal visitation of the AMC's facility must be performed. A written report detailing the visitation findings, signed by the Director (CFO), will be provided to the AMC, the Regional Director, and to the Director (AREMD) in the Washington Office.

Visitation Program Check Sheet:

The Visitation Program was developed with consideration given to each functional area of the RTC. The primary intent of the Visitation Program is to review the performance of the AMC in each area simultaneously. However, it is designed so that each section can be used as a stand alone product or in conjunction with other sections. The Visitation Program Check Sheet (attached as **Appendix** B) reflects varying degrees of inquiry; however, it is not intended to preclude the reviewer's initiative. As the Visitation Program is conducted, the reviewer may decide to pursue some topics in greater detail. With this structure, it is anticipated that the program can be used effectively throughout the different stages of the contract.

VII. INCENTIVE FEE STRUCTURE

The OM will evaluate the disposition activities of the AMC to determine if the incentive fee structures are causing the goals of the AMC to mirror the interests of the RTC.

To do this, the OM must be thoroughly familiar with the calculations of the disposition fees for REO, Affordable Housing, as well as Loans and Other Assets. In addition, the OM must have a working knowledge of the AMC's approved AMDP's. The OM will utilize operations and financial reports, as well as Site Visit and Visitation reports, in order to identify instances where the incentive fee structure did or did not appear to result in the AMC working the asset toward the highest net present value return to RTC.

The following are some examples of areas the OM should review:

- Evaluate monthly financial reports, as appropriate, to determine if assets are being managed toward disposition as envisioned in the approved AMDP and are achieving the anticipated recovery value(s).

- Review assets with high ERV's which do not appear to have been worked effectively toward disposition to determine if collection of the management fee may have contributed to lack of progress toward disposition.

- Identify patterns of sales under appraised/market value to ensure that collection of disposition fees is not distorting achievement of the highest return to RTC.

- Review a sampling of disposition activities to determine if the credit decision appears to have been negatively influenced by the fees to be earned.

The OM should recommend actions to correct any noted problems, provide constructive technical assistance to the contractor, and follow-up to ensure that recommendations are implemented.

The OM should provide the Director (CFO) with a periodic report regarding the results of this analysis.

VIII. DELEGATIONS OF AUTHORITY

The AMC may be issued formal DOA's to be utilized for approving actions reflected in AMDP's or cases. Actions exceeding the AMC's authority will be submitted to the RTC for approval. The OM will be responsible for the following:

- **Ensuring that the DOAs are utilized to the fullest extent but not exceeded:** This will be determined by reviewing cases approved under delegated authority and the credit decision log, through site visits and the visitation program (which will include a review of the case processing procedure), and by reviewing the quarterly case activity reports.

- **Determining that the DOA level is adequate:** Generally, the amount of authority granted to an AMC should be sufficient to allow the AMC to approve an appropriate number of the actions on assets assigned under the contract which will provide for effective management of the assets while still permitting the RTC to maintain a level of control over the more significant assets. If the level granted results in the AMC having authority to approve every action or results in RTC having to approve more than just the most significant actions, then the OM should make a recommendation regarding an adjustment to the amount of the AMC's DOA.

- **Verifying that delegations are used in compliance with RTC policy:** Many of the delegations have a caveat that provides for action to be taken so long as the process utilized, in reaching the point of taking action, has been in accordance with RTC policy. This will be determined through a review of business plans and cases submitted to the RTC for approval and through the visitation program.

IX. ASSET MANAGEMENT AND DISPOSITION MANUAL

The purpose of the AMDM is to provide a set of general policy and procedural guidelines to standardize and simplify the RTC'S credit management responsibilities. It should be understood that these are guidelines and, in certain situations, other approaches may be more appropriate in order to achieve what is in the best interest of the institution or RTC. It is expected, however, that these policy and procedural guidelines will be followed unless justified and substantiated in case memorandum to appropriate entities with delegated authority.

AMC's are contractually obligated to operate in conformance with the policy and procedural guidelines of the AMDM. A primary responsibility of the OM is to measure the AMC's compliance with the AMDM and to make recommendations for corrective action, or, if necessary, for disciplinary action(1) if the AMC fails to conform to the policies, procedures and guidelines.

The OM is responsible to ensure that the AMC has a sufficient supply of AMDM's and is kept informed of all changes in policies, procedures and guidelines in a timely manner. The OM is also responsible for providing training as to the contents of the AMDM to assure the AMC is afforded the opportunity to establish an operation in conformance with the AMDM.

---

(1)Disciplinary action could include formal counseling, written warning from the Director (CFO), written notice from the Regional Director that assets will be withdrawn for cause, or actual authorized withdrawal.

RTC
Resolution Trust Corporation

MEMORANDUM TO: Regional Directors
Deputy Regional Directors
Directors CFO
Resolution Trust Corporation

FROM: Lamar C. Kelly, Jr.
Director, AREMD

DATE: June 22, 1990

SUBJECT: Role of the Oversight Manager

It is the policy of the Resolution Trust Corporation (RTC) that assets not sold to institutions acquiring failed thrifts will be assigned to private sector Asset Management firms. Those firms will have direct responsibility for the management and disposition of the assets. Virtually all real estate and problem commercial and real estate loans will be managed and sold through private sector Asset Managers. Performing loans will be similarly serviced until we can arrange for sale.

The Asset Managers are, in effect, a fourth level of the RTC organization below the consolidated field office. This new level will be far and away the largest part of the RTC Asset Management and Disposition organization and will be both a major resource to extend the reach of the RTC staff and a new management challenge. The performance of this new organizational level will be critical to the success of the RTC.

Use of private sector Asset Managers in no way reduces the direct responsibility of RTC and RTC staff for the management and sale of assets. Rather, our role shifts from the more traditional FDIC mode of using in-house employees to manage, collect and sell assets to an organization devoted to contracting the services it requires to the private sector and then acting in the role of Oversight Manager.

CONSOLIDATED FIELD OFFICES

The staff in the consolidated field office represents, in most cases, the front-line guard in managing RTC's contracting and oversight function.

ASSET DISPOSITION PERSONNEL (Loans and other Assets)

It is the responsibility of these employees to:

- identify, package and prepare loans and other assets for contracting and assignment to Asset Managers;
- develop a solicitation of Services (SOS) for each contracting assignment;
- participate in contract offeror meetings;
- participate in contractor proposal evaluations;
- act as "Oversight Manager" of assigned contracts.

ASSET DISPOSITION PERSONNEL (Real Estate Owned)

It is the responsibility of these employees to:

- identify, package and prepare owned real estate property for contracting and assignment to Asset Managers;
- develop a Solicitation of Services (SOS) for each contracting assignment;
- participate in Asset Manager offeror meetings;
- participate in Asset Manager proposal evaluation;
- act as "Oversight Manager" of assigned contracts.

THE ROLE OF THE OVERSIGHT MANAGER

Every Asset Management Contract must have a CFO employee in Asset Disposition (loans and/or real estate) named as primary contact and Oversight Manager for the contract. The designated Oversight Manager may be the department head who uses staff to help administer the contract or an Asset Specialist who is supervised by a department head in the administration of the contract.

There are nine basic vehicles used by RTC and the Oversight Manager to govern Asset Managers.

STANDARD ASSET MANAGEMENT AND DISPOSITION AGREEMENT (SAMDA)

This documents the contractual terms between the RTC and the Asset Manager. The designated Oversight Manager must not only understand the terms of the Standard Asset Management and Disposition Agreement but must fully understand the final signed agreement as it may be modified to fit the features of a particular portfolio or Asset Management assignment. The Oversight Manager together with asset contracting specialists are responsible for ensuring that Asset Managers and RTC perform according to the terms of the contract.

INCENTIVE STRUCTURE

The final objective of RTC's incentive structure is to make the financial interest of the Asset Manager mirror the interests of the RTC. In other words, both Asset Manager and RTC want to maximize net present value return.

One of the more subtle but important demands on the Oversight Manager is to evaluate how the actual incentives are playing out. Excessive management fees could result in prolonged holding periods at the expense of earlier disposition through collection, settlement, or sale. Properly structured incentives will lessen the burden on the Oversight Manager because they will cause the Asset Manager to act in RTC's best interest.

DELEGATIONS OF AUTHORITY

In most cases, Asset Managers will require and have specific asset related delegations of authority. The Oversight Manager must be completely knowledgeable of and shall maintain a written record of the Asset Manager's delegations.

A primary responsibility of the Oversight Manager is to measure compliance with RTC's delegations of authority and make recommendations to change the delegations if existing levels seem too low (i.e. requiring excessive RTC employee involvement in day-to-day decision making), or too high (thus impairing our ability to maintain an adequate level of review).

ASSET MANAGEMENT AND DISPOSITION MANUAL

This manual contains the RTC's Asset Management and Disposition policies, procedures, and guidelines. Asset Managers are contractually obligated to operate in conformance with these guidelines. A primary responsibility of the Oversight Manager is to measure compliance with RTC's policies and to make recommendations for disciplinary action when an Asset Manager fails to conform to these guidelines.

It is also the Oversight Managers responsibility to ensure that the Asset Manager has a sufficient supply of manuals and is kept informed of all policy changes on a timely basis.

ASSET MANAGERS BUSINESS PLAN

SAMDA requires the Asset Manager to submit, within 30 days of contract execution, a preliminary business plan detailing the Asset Manager's:

- Proposed decision making structure;
- staffing;
- schedule of AMDP submission.

The Oversight Manager is responsible for review and evaluating the preliminary plan and making recommendations of approval or rejection to the Director of the consolidated field office. Said recommendation and decisions must be made and conveyed to the Asset Manager within ten (10) working days of receipt of the business plan.

A copy of the signed and approved preliminary plan must be maintained in the consolidated field office for review by Regional or Washington officials and government and outside auditors. The final business plan which consists of all of the approved AMDP's for all assets plus a summary, must all be maintained in the consolidated filed office

ASSET MANAGEMENT AND DISPOSITION PLANS

The Asset Management and Disposition Plan is the document which outlines the Asset Manager's strategy for managing, collecting or selling a particular asset or group of assets. Individual plans must be filed for delinquent loans or real estate properties over specified thresholds. All other assets are typically covered under plans grouping performing loans or lower dollar value, homogenous assets together.

The Oversight Manager is responsible for determining that all plans have been prepared and distributed in a timely manner.

Plans requiring RTC approval must be processed through the local RTC office within a maximum of two weeks of receipt by RTC. Repeated failure to process plans or cases within this two week timeframe must be brought to the attention of the Director (CFO) with a recommendation for a revised level of delegations for the Asset Manager, or a conference with the Asset Manager should the quality of plans being submitted be the cause of processing delays, or other appropriate action.

The CFO Director and Oversight Manager are responsible for logging all Asset Plans requiring RTC approval with logs to include the following minimum information:

- Date of receipt;
- Date of approval, concurrence, or rejections;
- Level of delegated authority making final approval;
- Delegation Numbers (type of action);
- Name of Asset Manger;
- Asset Number and Name;
- Receivership Name or Conservatorship Name.

The CFO should program this reporting to allow automatic sorting by each data element noted above.

ECR/CASH FLOW/COLLECTIONS AND OTHER REQUIRED REPORTING

Asset Managers will be required to submit estimated cash recovery forecasts for assets under management.

The Oversight Manger should compare actual collection results with projected recoveries and discuss significant variances with the Asset Manager and the Director of the CFO.

Under SAMDA, the Asset Manager will be required to submit a variety of reports measuring performance and compliance with certain mandates under FIRREA. The Oversight Manger is responsible for ensuring these reports are distributed in a timely manner and provide written notification to the Asset Manager of a failure to submit any report.

CONTRACT REVIEW MEETINGS

The Oversight Manager and Director of the CFO should continually take steps to foster effective communications between RTC and Asset Managers.

The Oversight Manger and CFO Director are required to schedule and convene an Asset Management Contract Review Meeting to take place quarterly or semi-annually and discuss with the Asset Manager such issues as:

- Asset Manager's goals and objectives;
- Overall performance to date;
- Collection results;
- Sales results;
- Quality of AMDP's, cases, file documentation, etc.;
- Compliance with RTC policies and procedures;
- Any major deficiencies or problems.

The Director of the CFO shall execute and deliver to the Asset Manager a letter highlighting the significant areas discussed during the meeting. A copy of each letter shall be delivered to the Regional Director.

ASSET MANAGER SITE VISITATIONS

Effective oversight should include on site "visitation" of the Asset Manger's facilities. The Oversight Manager will often meet "on site" in an official but informal capacity. However, for contracts over $200 million, the Director of the CFO and the Oversight Manager must conduct an annual formal visitation of the Asset Manager's facility and render a written report detailing their findings. A copy of the report will be given to the Asset Manager, Regional Director and Director of AREMD in Washington, D.C.

A meeting with the Asset Manger should be scheduled to discuss these findings and may substitute for the contract review meeting mentioned above.

The preliminary requirements and format for these visitations are being developed. A final format will be distributed upon completion.

SUMMARY

Most of the Assets held by RTC will be managed directly by Asset Managers in the private sector. Most asset related decisions will be made internally by the Asset Manager and RTC staff will serve in the role of Oversight Manager conducting "after-the-fact" reviews.

It is our objective that Asset Managers be afforded the flexibility to act without RTC causing a logjam in the decision making process. Asset Managers should be required to clearly set such goals and objectives for each Asset Manager and RTC staff should carefully measure progress toward those goals.

Communication between the Asset Manager and the RTC must take place to foster a working partnership in which each party understands the requirements of the other.

The goal of the Oversight Manager is to get RTC assets under private sector management, measure the performance of the Asset Manager and institute corrective measures when contractor performance is unsatisfactory.

cc: Dave C. Cooke
Lamar Kelly
Bill Roelle
Lisa Spector
Art Stow
Shervin Koopmans
Tom Horton
John Tierney
All Asset Directors - Professional Staff - AREMD Division

pmm:oversight

ASSET MANAGEMENT CONTRACTOR PERFORMANCE VISITATION CHECKLIST

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2. Visitation Summary

ASSET MANAGEMENT CONTRACTOR: ______________________ **DATE:** __________

ASSET MANAGEMENT CONTRACTOR PERFORMANCE VISITATION	**(A) Acceptable** **(U) Unacceptable** **(N/A) Not Applicable** **Comments Reference**
I. MANAGEMENT	
A. General	
1. Systems are in place to ensure dissemination and understanding of RTC policies, i.e. meetings, training and AMDP distribution.	( ) A ( ) U ( ) N/A Comments Reference ________
2. Staffing levels and expertise at field site are appropriate for current composition of portfolio and are in compliance with bid proposal and Preliminary Business Plan.	( ) A ( ) U ( ) N/A Comments Reference ________
3. Safeguards exist to ensure against conflicts of interest and the means to detect them if they arise.	( ) A ( ) U ( ) N/A Comments Reference ________
4. Corrections to any exceptions noted on previous site visitations have been implemented.	( ) A ( ) U ( ) N/A Comments Reference ________
B. Asset Management and Disposition Manual/ RTC Policies	
1. Appropriate Asset Management personnel have in their possession a complete AMDM and all RTC directives.	( ) A ( ) U ( ) N/A Comments Reference ________
2. Systems are in place to ensure timely distribution of updates to the AMDM to appropriate personnel.	( ) A ( ) U ( ) N/A Comments Reference ________
3. Based upon interviews, Asset Management Staff/Management are conversant regarding the AMDM.	( ) A ( ) U ( ) N/A Comments Reference ________
4. Seminars/training are conducted internally by the Asset Manager on the various topics in the AMDM.	( ) A ( ) U ( ) N/A Comments Reference ________
C. Business Plans/AMDPs	
1. Preliminary Business Plan was submitted within the time frame required.	( ) A ( ) U ( ) N/A Comments Reference

ASSET MANAGEMENT CONTRACTOR: ______________________ **DATE:** __________

ASSET MANAGEMENT CONTRACTOR PERFORMANCE VISITATION	**(A) Acceptable** **(U) Unacceptable** **(N/A) Not Applicable** **Comments Reference**
2. **Preliminary Plan was complete, addressed all necessary items & requirements, and was consistent with bid proposal.**	( ) A ( ) U ( ) N/A Comments Reference ______
3. Annual update to business plan prepared and complete within required time frame.	( ) A ( ) U ( ) N/A Comments Reference ______
4. Asset Management Contractor is carrying out Preliminary Plan in daily activities.	( ) A ( ) U ( ) N/A Comments Reference ______
5. AMDPs were received within the time frame outlined in the Preliminary Plan. If not, please comment as to the circumstances.	( ) A ( ) U ( ) N/A Comments Reference ______
6. Procedures have been established to update AMDPs on a timely basis when significant events occur.	( ) A ( ) U ( ) N/A Comments Reference ______
7. AMDPs for assets added to portfolio are submitted within the required time frame (90 days).	( ) A ( ) U ( ) N/A Comments Reference ______
8. Asset Management Contractor is carrying out the strategies approved in the AMDP.	( ) A ( ) U ( ) N/A Comments Reference ______
D. Expenditure/Cost Controls	
1. Steps are taken to ensure effective cost controls are in place.	( ) A ( ) U ( ) N/A Comments Reference ______
2. Duties are adequately segregated so that no one individual can authorize, sign and post disbursements.	( ) A ( ) U ( ) N/A Comments Reference ______
3. Expenditures are supported by appropriate written authorizations, check requests, and invoices.	( ) A ( ) U ( ) N/A Comments Reference ______
4. Procedures are in place to allow for the monitoring of expenses on an individual asset basis?	( ) A ( ) U ( ) N/A Comments Reference ______

ASSET MANAGEMENT CONTRACTOR: ______________________ DATE: __________

ASSET MANAGEMENT CONTRACTOR PERFORMANCE VISITATION	(A) Acceptable (U) Unacceptable (N/A) Not Applicable Comments Reference
5. Procedures are in place to identify any variances of actual expenses from budgeted amounts?	( ) A ( ) U ( ) N/A Comments Reference __________
6. Participants are being billed on a timely basis for their prorata share of all expenses with adequate pursuit of collection if not paid.	( ) A ( ) U ( ) N/A Comments Reference __________
7. Where a low bidder was not selected, there is adequate support for using a higher bid.	( ) A ( ) U ( ) N/A Comments Reference __________
8. Adequate authority and proper documentation exits for all expenditures.	( ) A ( ) U ( ) N/A Comments Reference __________
E. Incentive Fee Calculations	
1. ERV for the Addition of Assets was verified and adjusted when calculating the management fee.	( ) A ( ) U ( ) N/A Comments Reference __________
2. Numerator and denominator were verified for accuracy.	( ) A ( ) U ( ) N/A Comments Reference __________
3. The correct percentages for calculating the disposition fee based upon the timing of the asset sale is verified internally for accuracy.	( ) A ( ) U ( ) N/A Comments Reference __________
4. Contractor's systems provide sufficient data to allow accurate calculation of the management, disposition, and incentive fees.	( ) A ( ) U ( ) N/A Comments Reference __________
5. Calculations are made in accordance with SAMDA contract.	( ) A ( ) U ( ) N/A Comments Reference __________

ASSET MANAGEMENT CONTRACTOR: ______________________ **DATE:** ____________

ASSET MANAGEMENT CONTRACTOR PERFORMANCE VISITATION	**(A) Acceptable** **(U) Unacceptable** **(N/A) Not Applicable** **Comments Reference**
II. ADMINISTRATION	
A. Delegations of Authority	
1. Approved AMDPs and case memoranda reveal appropriate level of understanding of and compliance with the Delegations of Authority.	( ) A ( ) U ( ) N/A Comments Reference ____________
2. The makeup of the Credit Review Committee (CRC) is in compliance with the Preliminary Business Plan and the committee has sufficient authority to approve a majority of credit related decisions.	( ) A ( ) U ( ) N/A Comments Reference ____________
3. The Asset Management Contractor has re-delegated authority to individuals for small dollar, routine matters.	( ) A ( ) U ( ) N/A Comments Reference ____________
4. Approvals are obtained prior to actions being taken.	( ) A ( ) U ( ) N/A Comments Reference ____________
B. Cases	
1. A case tracking system is in place and maintained which records: 1) date received; 2) date acted on; 3) source of case; 4) delegation number; 5) case number; 6) asset name and number; 7) asset book value; 8) status if submitted to higher level; and 9) tracks the timely consummation of approved actions.	( ) A ( ) U ( ) N/A Comments Reference ____________
2. Cases are heard in a timely manner.	( ) A ( ) U ( ) N/A Comments Reference ____________
3. CRC meets regularly and clearly documents its actions.	( ) A ( ) U ( ) N/A Comments Reference ____________
4. Copies of approved cases are maintained in a central area, a log maintained and proper records retained to determine disposition of cases.	( ) A ( ) U ( ) N/A Comments Reference ____________

ASSET MANAGEMENT CONTRACTOR: ______________________ **DATE:** ____________

ASSET MANAGEMENT CONTRACTOR PERFORMANCE VISITATION	**(A) Acceptable** **(U) Unacceptable** **(N/A) Not Applicable** **Comments Reference**
5. The following case activity reports are properly prepared and submitted in a timely manner. a. Case Activity Report Recap/Cases Approved Under Delegated Authority (quarterly) b. Cases Approved Under Delegated Authority (quarterly) c. Credit Decision Log (quarterly) d. Actions Taken Under Blanket Authority	( ) A ( ) U ( ) N/A Comments Reference ______________
6. Case approvals evidence prudent business decisions and are within the appropriate level of authority with major decisions made by committee.	( ) A ( ) U ( ) N/A Comments Reference ______________
7. Case documentation is adequate to support informed decisions.	( ) A ( ) U ( ) N/A Comments Reference ______________
8. Credit cases receive supervisory review for appropriateness of actions and for proper interpretation of the delegation of authority.	( ) A ( ) U ( ) N/A Comments Reference ______________
C. Documentation Control/Records Management	
1. Asset and collateral files are created and inventoried.	( ) A ( ) U ( ) N/A Comments Reference ______________
2. Written procedures exist on filing and maintaining all files and notes.	( ) A ( ) U ( ) N/A Comments Reference ______________
3. Contractor maintains complete and accurate files, books and records of business activities and operations conducted in connection with SAMDA.	( ) A ( ) U ( ) N/A Comments Reference ______________
4. These files books and records are maintained in a computerized electronic information system available in such computer readable format the RTC may request.	( ) A ( ) U ( ) N/A Comments Reference ______________

ASSET MANAGEMENT CONTRACTOR: ____________________ **DATE:** __________

ASSET MANAGEMENT CONTRACTOR PERFORMANCE VISITATION	**(A) Acceptable** **(U) Unacceptable** **(N/A) Not Applicable** **Comments Reference**
5. Collateral files and notes are maintained in a secure and fireproof area under dual control.	( ) A ( ) U ( ) N/A Comments Reference __________
6. Proper procedures for controlling access to asset files maintained on computerized systems have been implemented.	( ) A ( ) U ( ) N/A Comments Reference __________
7. Files are centralized and maintained under strict control and at least twice a year are inventoried against asset list to ensure all collateral and files are properly maintained and accounted for. Documentation for this semi-annual inventory is on file for RTC review.	( ) A ( ) U ( ) N/A Comments Reference __________
8. Procedures have been implemented to ensure that proper controls are in place for processing releases of notes and collateral in accordance with approved actions.	( ) A ( ) U ( ) N/A Comments Reference __________
9. RTC procedures regarding the original Association asset file have been implemented to ensure the integrity of those files.	( ) A ( ) U ( ) N/A Comments Reference __________
10. Assets Management Contractor maintains tickler system for taxes, insurance, statutes of limitation and UCC filing.	( ) A ( ) U ( ) N/A Comments Reference __________
D. Asset Processing Information Review and Update	
1. T&I Escrow activity reports (account 1266) are generated by the loan system and reviewed regularly by Asset Management Contractor.	( ) A ( ) U ( ) N/A Comments Reference __________
2. Asset Management Contractor reviews and performs yearly T&I Analysis to determine new T&I payments.	( ) A ( ) U ( ) N/A Comments Reference __________

ASSET MANAGEMENT CONTRACTOR: ______________________ **DATE:** ____________

ASSET MANAGEMENT CONTRACTOR PERFORMANCE VISITATION	(A) Acceptable (U) Unacceptable (N/A) Not Applicable Comments Reference
3. Customer service problems are being addressed appropriately and expeditiously.	( ) A ( ) U ( ) N/A Comments Reference
4. All DACS reporting and processing requirements are met.	( ) A ( ) U ( ) N/A Comments Reference
5. Accounts maintained by Asset Management Contractor are in accordance with generally accepted accounting principles and in the accounting formats set forth in the attachments to the SAMDA.	( ) A ( ) U ( ) N/A Comments Reference
6. Asset Management Contractor reviews pending interest rate change reports generated with change made on subsidiary loan system and ensures that borrower is notified.	( ) A ( ) U ( ) N/A Comments Reference
7. Index rates are being changed properly and on a timely basis.	( ) A ( ) U ( ) N/A Comments Referance
8. Asset Management Contractor receives and reviews daily trial balance to ensure that accurate and timely posting of payments is done.	( ) A ( ) U ( ) N/A Comments Reference
9. Asset Management Contractor ensures that approved modifications of loan terms for workouts, restructures, term sales, etc. are posted to the subsidiary ledger (trial balance) and reflect the current status of the asset.	( ) A ( ) U ( ) N/A Comments Reference
10. Asset Management Contractor records reflect for each assigned asset all transactions of income and expense allocable to the management and disposition of such assets.	( ) A ( ) U ( ) N/A Comments Reference

ASSET MANAGEMENT CONTRACTOR: ______________________ **DATE:** __________

ASSET MANAGEMENT CONTRACTOR PERFORMANCE VISITATION	**(A) Acceptable** **(U) Unacceptable** **(N/A) Not Applicable** **Comments Reference**
11. **Asset Management Contractor prepares and forwards to RTC at least monthly financial reports including statement of collections, disbursements, and balances of operating accounts, for the preceeding calendar month.**	**( ) A ( ) U ( ) N/A** **Comments Reference** ______________
12. Asset Management Contractor updates and maintains data on any automated RTC software system in a timely manner as determined by RTC.	( ) A ( ) U ( ) N/A Comments Reference ______________
13. When applicable Asset Management Contractor records and reports tax information to IRS to satisfy 1098/1099 reporting requirements.	( ) A ( ) U ( ) N/A Comments Reference ______________
III. ESTIMATED CASH RECOVERY	
1. Estimated Cash Recovery (ECR) for each asset is done in accordance with the procedures set forth in the Asset Management and Disposition Manual.	( ) A ( ) U ( ) N/A Comments Reference ______________
2. Variance between actual collections and ECR projections are analyzed with reasons for significant variances documented.	( ) A ( ) U ( ) N/A Comments Reference ______________
3. Evidence exists to reflect that the Asset Management Contractor is analyzing alternative recovery strategies to arrive at appropriate ECR's.	( ) A ( ) U ( ) N/A Comments Reference ______________
IV. ASSET MARKETING/BULK SALES	
1. Asset Manager utilizes RTC's policies for stratifying, valuing, pricing, and marketing assets for bulk sales.	( ) A ( ) U ( ) N/A Comments Reference ______________

ASSET MANAGEMENT CONTRACTOR: ____________________ **DATE:** ____________

ASSET MANAGEMENT CONTRACTOR PERFORMANCE VISITATION	**(A) Acceptable** **(U) Unacceptable** **(N/A) Not Applicable** **Comments Reference**
2. All asset marketing and bulk sale efforts are fully documented.	( ) **A** ( ) **U** ( ) **N/A** Comments Reference ____________
3. Bulk sales close in a timely manner and in accordance with the sale agreement.	( ) **A** ( ) **U** ( ) **N/A** Comments Reference ____________
4. Procedures to ensure that all written inquiries from parties expressing an interest in acquiring assets have a response within 30 days of receipt of the inquiry.	( ) **A** ( ) **U** ( ) **N/A** Comments Reference ____________
5. Asset Management Contractor is continually identifying and packaging assets that are available for sale.	( ) **A** ( ) **U** ( ) **N/A** Comments Reference ____________

ASSET MANAGEMENT CONTRACTOR: ______________________ **DATE:** ____________

ASSET MANAGEMENT CONTRACTOR PERFORMANCE VISITATION	**(A) Acceptable** **(U) Unacceptable** **(N/A) Not Applicable** **Comments Reference**
V. REAL ESTATE OWNED **A. General**	[redacted]
1. Steps are taken to ensure that RTC's current inventory of REO has been updated at least monthly and reflects accurate information.	( ) A ( ) U ( ) N/A Comments Reference ____________________
2. A sampling of REO files reveals they are properly documented with the following, when applicable. a. Approved real estate budget b. Approved cases/AMDPs c. Marketing strategy d. Recorded deed e. Insurance coverage f. Title opinion/commitment g. Paid tax receipt h. Current appraisal i. Appraisal exceptions and waivers j. Marketing efforts k. Sales contracts l. Property inspection reports m. A log for expenses incurred - are they within the approved budget? n. Approved listing agreement o. Monthly broker reports, if applicable p. Lease agreement q. Management agreement r. Management reports s. Record of income earned t. Operating Statements	( ) A ( ) U ( ) N/A Comments Reference ____________________
2a. Examined ________ files with a total ERV of $__________________ representing___________% of owned real estate asset portfolio. ___________ % were in compliance.	
3. Based on conversations with the disposition staff, current activity and property status are reflected in the REO files.	( ) A ( ) U ( ) N/A Comments Reference ____________________

ASSET MANAGEMENT CONTRACTOR: ______________________ **DATE:** __________

ASSET MANAGEMENT CONTRACTOR PERFORMANCE VISITATION	**(A) Acceptable** **(U) Unacceptable** **(N/A) Not Applicable** **Comments Reference**
4. **Tickler systems are current and used for:** a. Expiration of sales contracts b. Lease contracts c. Appraisals d. Listing contracts e. Taxes f. Insurance	( ) A ( ) U ( ) N/A Comments Reference
5. Adjustments to market value have been approved by the appropriate level of authority and are in accordance with RTC's policy on appraisal adjustments.	( ) A ( ) U ( ) N/A Comments Reference
6. Insurance is deleted when a property is sold and refunds are collected and remitted to RTC.	( ) A ( ) U ( ) N/A Comments Reference
7. A log is maintained on all written offers which reflects their disposition and is retained in each asset file.	( ) A ( ) U ( ) N/A Comments Reference
8. Written offers are responded to within the time frame dictated by RTC.	( ) A ( ) U ( ) N/A Comments Reference
9. The purchaser's ability to complete the sale is evaluated prior to recommending offers.	( ) A ( ) U ( ) N/A Comments Reference
10. Properties are periodically inspected in accordance to SAMDA requirements.	( ) A ( ) U ( ) N/A Comments Reference
11. Purchaser's "Disclosure of RTC Employee Interest" forms are being completed prior to recommendation of offers.	( ) A ( ) U ( ) N/A Comments Reference
12. An appropriate analysis of the tax assessment on each REO has been made and reductions in taxes are aggressively pursued.	( ) A ( ) U ( ) N/A Comments Reference
13. The cost of tax reduction efforts is justified relative to savings realized.	( ) A ( ) U ( ) N/A Comments Reference

ASSET MANAGEMENT CONTRACTOR: ______________________ **DATE:** ____________

ASSET MANAGEMENT CONTRACTOR PERFORMANCE VISITATION	(A) Acceptable (U) Unacceptable (N/A) Not Applicable Comments Reference
14. The Asset Management Contractor is adhering to RTC's environmental program.	( ) A ( ) U ( ) N/A Comments Reference __________
15. The Asset Management Contractor attempts to consolidate the management of various RTC participation interest in accordance with RTC policy.	( ) A ( ) U ( ) N/A Comments Reference __________
16. The performance of Property Managers is being monitored to ensure the the protection and maintenance of all property.	( ) A ( ) U ( ) N/A Comments Reference __________
B. REO Marketing	
1. Steps are taken to ensure that all REO is being marketed according to policies outlined in the AMDM. Reference exceptions and justifications.	( ) A ( ) U ( ) N/A Comments Reference __________
2. REO sales are consummated in accordance with sale agreements and approved AMDPs or cases.	( ) A ( ) U ( ) N/A Comments Reference __________
3. Appropriate details on properties are provided in information packages prepared for dissemination to investors and brokers.	( ) A ( ) U ( ) N/A Comments Reference __________
4. Incentives are used to motivate brokers to market and sell properties in a manner which results in the highest return to the RTC.	( ) A ( ) U ( ) N/A Comments Reference __________
5. REO is sold within the percent of appraised value requirements of FIRREA.	( ) A ( ) U ( ) N/A Comments Reference __________

ASSET MANAGEMENT CONTRACTOR: ______________________ **DATE:** ____________

ASSET MANAGEMENT CONTRACTOR PERFORMANCE VISITATION	**(A) Acceptable** **(U) Unacceptable** **(N/A) Not Applicable** **Comments Reference**
C. **Affordable Housing**	
1. Asset Management Contractor maintains an updated list of all eligible properties. a. By type single family b. By type multi-family c. By area state d. By area city e. By institution	( ) **A** ( ) **U** ( ) **N/A** Comments Reference ____________
2. All eligible properties have a current appraisal or other valuation required in accordance with RTC policy.	( ) **A** ( ) **U** ( ) **N/A** Comments Reference ____________
3. Steps are taken to ensure that all eligible properties are being made ready to list with a clearinghouse.	( ) **A** ( ) **U** ( ) **N/A** Comments Reference ____________
4. The affordable housing manual is kept up-to-date and is readily available to appropriate personnel.	( ) **A** ( ) **U** ( ) **N/A** Comments Reference ____________
5. An affordable housing correspondence file is maintained.	( ) **A** ( ) **U** ( ) **N/A** Comments Reference ____________
6. Approved forms are being used for: a. Brokers Listing Agreement b. Sales Contract Single Family c. Sales Contract Multi-Family d. Solicitation of Services e. Income Qualification f. Notice of Listing to Clearinghouse g. Request for Inspections h. Written Expression of Serious Interest i. Notice of Readiness for Sale j. Land Use Restriction Agreement k. Sales Tracking Form l. Accepted Offers Report	( ) **A** ( ) **U** ( ) **N/A** Comments Reference ____________
7. Bulk sales are conducted in accordance with Final Rule and RTC directives.	( ) **A** ( ) **U** ( ) **N/A** Comments Reference ____________

ASSET MANAGEMENT CONTRACTOR: ______________________ **DATE:** __________

ASSET MANAGEMENT CONTRACTOR PERFORMANCE VISITATION	**(A) Acceptable (U) Unacceptable (N/A) Not Applicable Comments Reference**
8. RTC financing plans are being implemented during the affordable housing marketing period.	( ) A ( ) U ( ) N/A Comments Reference ______________
9. The Asset Management Contractor ensures that subcontractors have been provided the necessary information on the program. a. Management company b. Appraisers c. Brokers	( ) A ( ) U ( ) N/A Comments Reference ______________
10. The Asset Management Contractor ensures that subcontractors are in compliance with the program.	( ) A ( ) U ( ) N/A Comments Reference ______________
11. Properties are being offered for resale under the affordable housing provisions per the Final Rule if an accepted offer fails to close.	( ) A ( ) U ( ) N/A Comments Reference ______________

ASSET MANAGEMENT CONTRACTOR: ______________________ **DATE:** ____________

ASSET MANAGEMENT CONTRACTOR PERFORMANCE VISITATION	**(A) Acceptable** **(U) Unacceptable** **(N/A) Not Applicable** **Comments Reference**
VI. LOAN AND OTHER ASSETS PORTFOLIO MANAGEMENT	
A. General	
1. Steps are taken to ensure that assets are being managed and disposed of in accordance with AMDM and approved AMDPs.	( ) A ( ) U ( ) N/A Comments Reference ____________
2. A sampling of files for loans and other assets reveals they are properly documented with the following, when applicable. a. Approved Cases/AMDPs b. Current Appraisals c. Appraisal exceptions & waivers d. Current Financial Statements e. Tax Returns f. Private Mortgage Insurance (PMI) g. Other Insurance/Guarantees h. Demand Request i. Correspondence and Agreements j. Written record of any meetings, or calls with the debtor. k. Proper Collateral Documentation l. Asset Searches m. Lien Searches n. UCC-1 Filings	( ) A ( ) U ( ) N/A Comments Reference ____________
2a. Examined ________ files with a total ERV of $______________ representing% of loans or other assets portfolio. __________% were in compliance.	
3. Insurance on collateral is adequately reviewed and monitored.	( ) A ( ) U ( ) N/A (Comments Reference/a ____________
4. Insurance is deleted when property is sold and refunds are collected and remitted to RTC.	( ) A ( ) U ( ) N/A Comments Reference ____________
5. Procedures have been implemented to properly handle notices of bankruptcy.	( ) A ( ) U ( ) N/A Comments Reference ____________

ASSET MANAGEMENT CONTRACTOR: ______________________ **DATE:** ____________

ASSET MANAGEMENT CONTRACTOR PERFORMANCE VISITATION	**(A) Acceptable** **(U) Unacceptable** **(N/A) Not Applicable** **Comments Reference**
6. Workout and restructure agreements are approved within the parameters established in the AMDM and RTC policy.	( ) A ( ) U ( ) N/A Comments Reference ____________________
7. Compromise/settlement offers are responded to within the 30-day period in accordance with RTC policy?	( ) A ( ) U ( ) N/A Comments Reference ____________________
8. The Asset Management Contractor has written repossession procedures in place which are prudent and adhered to.	( ) A ( ) U ( ) N/A Comments Reference ____________________
9. Utilizing net present value concepts, an economic analysis of all alternatives is performed prior to pursuit of any collection strategies, including repossessions, workouts, foreclosures, and, pursuit of deficiency judgements.	( ) A ( ) U ( ) N/A Comments Reference ____________________
10. Updated ticklers exist and are used for: a. UCC Filings b. Statutes Of Limitations c. Property Insurance d. Life Insurance Premium Due Dates e. Property Tax Payment Due Dates f. Other Escrow Payment Requirements g. Court Dates for Appearances & Filings h. Addresses & Maturation Dates on Loans & Securities i. Refillings of Chattel Mortgages j. Expiration of Judgement Limitations k. Extensions of Mortgages l. Cross-Reference Index System to Identify Co-Makers, Endorsers and Guarantors n. Borrower Financial Statement Due Dates o. Other ticklers as necessary and discussed in the AMDM II-C-I	( ) A ( ) U ( ) N/A Comments Reference ____________________
11. A comprehensive list of personal property owned and collateral repossessed is being maintained on a current basis.	( ) A ( ) U ( ) N/A Comments Reference ____________________

ASSET MANAGEMENT CONTRACTOR: ____________________ **DATE:** ____________

ASSET MANAGEMENT CONTRACTOR PERFORMANCE VISITATION	**(A) Acceptable** **(U) Unacceptable** **(N/A) Not Applicable** **Comments Reference**
12. Assets with no collectable value are written off in a timely manner in accordance with RTC write-off policy and procedures.	( ) A ( ) U ( ) N/A Comments Reference ____________
13. Procedures exist for proper collection activity and required notification for agency guaranteed loans. a. Student Loans b. FNMA c. FHLMC d. GNMA e. FHA/VA	( ) A ( ) U ( ) N/A Comments Reference ____________
14. Appropriate and accurate charge off and control records are in place, such as subsidiary ledgers, notes and asset files.	( ) A ( ) U ( ) N/A Comments Reference ____________
15. Before approving or recommending any advance, the Asset Management Contractor determines whether the collateral has sufficient value or equity and whether the advance is necessary for preservation of the collateral.	( ) A ( ) U ( ) N/A Comments Reference ____________
16. The Asset Management Contractor attempts to consolidate the management of various RTC participation interest in accordance with RTC policy.	( ) A ( ) U ( ) N/A Comments Reference ____________

ASSET MANAGEMENT CONTRACTOR: ______________________ **DATE:** ____________

ASSET MANAGEMENT CONTRACTOR PERFORMANCE VISITATION	**(A) Acceptable (U) Unacceptable (N/A) Not Applicable Comments Reference**
VII. APPRAISALS	
1. Appraisals are being contracted from appraisers who are registered to perform services for the RTC.	( ) A ( ) U ( ) N/A Comments Reference ______________
2. Commissioned appraisers and the staff are knowledgeable in and adhering to RTC appraisal policies and procedures.	( ) A ( ) U ( ) N/A Comments Reference ______________
3. The appraisal ordering process includes an adequate bidding procedure that ensures a quality product and cost effectiveness.	( ) A ( ) U ( ) N/A Comments Reference ______________
4. Ordering of appraisal reports are performed in accordance with mandatory subcontracting procedures.	( ) A ( ) U ( ) N/A Comments Reference ______________
5. Current appraisals are in file for each property as required by RTC policy.	( ) A ( ) U ( ) N/A Comments Reference ______________
6. When the reconciled difference between the two current appraisals exceeds 30%, a third appraisal is ordered or obtained.	( ) A ( ) U ( ) N/A Comments Reference ______________
7. Appraisal review procedures:	
a. The review function is being performed internally or by third party review contractors?	( ) A ( ) U ( ) N/A Comments Reference ______________
b. In cases where the second appraisal rule is waived, the first appraisal is submitted to appraisal review.	( ) A ( ) U ( ) N/A Comments Reference ______________
c. If values between two appraisals differ more than 20%, each report is reviewed and there is sufficient discussion with the submitting appraisers before calculating average value.	( ) A ( ) U ( ) N/A Comments Reference ______________

ASSET MANAGEMENT CONTRACTOR: ______________________ **DATE:** ____________

ASSET MANAGEMENT CONTRACTOR PERFORMANCE VISITATION	(A) Acceptable (U) Unacceptable (N/A) Not Applicable Comments Reference
8. Once the appraisal is ordered, pertinent asset or property information (i.e., survey, rent toll, operating expenses) is being forwarded in a timely manner to the appointed appraiser.	( ) A ( ) U ( ) N/A Comments Reference ____________
9. RTC policy is being followed with respect to confidentiality.	( ) A ( ) U ( ) N/A Comments Reference ____________
10. Appraisals are being performed by different appraisers every two years.	( ) A ( ) U ( ) N/A Comments Reference ____________
11. The requirements of RTC's environmental program are being adhered to.	( ) A ( ) U ( ) N/A Comments Reference ____________

ASSET MANAGEMENT CONTRACTOR: ______________________ **DATE:** __________

ASSET MANAGEMENT CONTRACTOR PERFORMANCE VISITATION	**(A) Acceptable** **(U) Unacceptable** **(N/A) Not Applicable** **Comments Reference**
VIII. SUB-CONTRACTING	
1. Mandatory sub-contracting has been implemented in accordance with SAMDA.	( ) A ( ) U ( ) N/A Comments Reference
2. Steps are taken to ensure that current active sub-contractors are being reviewed and are in conformance with RTC regulations (12 CFR Parts 1506 and 1606) governing contractor fitness and integrity.	( ) A ( ) U ( ) N/A Comments Reference
3. RTC contractor and engagement procedures are being followed including:	
a. Solicitation of minority and women-owned businesses for subcontracting services, and	( ) A ( ) U ( ) N/A Comments Reference
b. RTC procedures for contracting with affiliate companies.	( ) A ( ) U ( ) N/A Comments Reference
4. Files exist for written sub-contracts and contain a minimum of the following:	( ) A ( ) U ( ) N/A Comments Reference
a. A fully-executed original of the contract with all exhibits and amendments. b. Appropriate certificates of insurance. c. The SOS package that was sent, as well as a list of firms solicited. d. The authorization or request initiating the solicitation. e. The contract proposal from all firms submitting proposals. f. Documentation reflecting the evaluation, selection, and bid process. g. Signed approval by proper authority to contract with the firm selected.	
5. Systems exist to assure the AMC that subcontractor has adequate insurance, if required.	( ) A ( ) U ( ) N/A Comments Reference

ASSET MANAGEMENT CONTRACTOR: ______________________________ **DATE:** ______________

ASSET MANAGEMENT CONTRACTOR PERFORMANCE VISITATION	**(A) Acceptable** **(U) Unacceptable** **(N/A) Not Applicable** **Comments Reference**
6. Performance of sub-contractors is adequately monitored.	( ) A ( ) U ( ) N/A Comments Reference __________________
7. Contracting Activity Reports are accurate, complete, and submitted in a timely manner.	( ) A ( ) U ( ) N/A Comments Reference __________________
8. Mandatory subcontracts are approved under proper delegations of authority.	( ) A ( ) U ( ) N/A Comments Reference __________________

ASSET MANAGEMENT CONTRACTOR: ____________________ **DATE:** __________

ASSET MANAGEMENT CONTRACTOR PERFORMANCE VISITATION	**(A) Acceptable** **(U) Unacceptable** **(N/A) Not Applicable** **Comments Reference**
IX. LITIGATION AND INVESTIGATIONS	
A. Litigation	
1. Evidence exists to reflect that alternatives were considered in an effort to avoid litigation.	( ) A ( ) U ( ) N/A Comments Reference ____________
2. RTC procedures for referral of litigation to counsel are utilized.	( ) A ( ) U ( ) N/A Comments Reference ____________
3. Only approved RTC attorneys are used.	( ) A ( ) U ( ) N/A Comments Reference ____________
4. The Asset Management Contractor is monitoring the status of legal cases and assets after referral to counsel.	( ) A ( ) U ( ) N/A Comments Reference ____________
5. The Asset Management Contractor is monitoring legal fees to avoid excessive fees.	( ) A ( ) U ( ) N/A Comments Reference ____________
B. Investigations	
1. The Asset Management Contractor coordinates with assigned legal and investigations on the disposition of assets under investigations.	( ) A ( ) U ( ) N/A Comments Reference ____________
2. The Asset Management Contractor refer any suspicious transactions or occurrences to RTC for further investigation.	( ) A ( ) U ( ) N/A Comments Reference ____________

ASSET MANAGEMENT CONTRACTOR: ______________________ **DATE:** ____________

EXPANDED COMMENT PAGE(S)

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Asset Management Contractor Visitation Summary

AMC Name:________________________________ AMC No._________

AMC Location:____

Solicitation No.:________________________ Date:____________

Portfolio Asset Type(s):_______________________________________

SAMDA BV$:___________________ ERV$:_________________

……

Visitation Findings:

Compliance with SAMDA:

Compliance with RTC Policy:

Compliance and Quality of Reporting Requirements:

Adherence to Delegations of Authority:

REO (marketing, sales, budgets, etc):

Problem Loan and Other Asset Disposition:

Asset Management Contractor
Visitation Summary
Page 2

Case Processing and AMDPs:

Asset Marketing:

Compliance with Contracting Policy and Procedures:

Staffing and Organizational Issues:

……

Visitation Results: Satisfactory Marginal Unsatisfactory
(circle one)

Comments:

……

Acknowledgements of Receipt:

Oversight Manager:____________________________ Date:__________

Director (CFO):____________________________ Date:__________

AMC:________________________________ Date:__________